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October 27, 2003

VIA E-MAIL and FEDERAL EXPRESS

The Honorable James T. Odiorne
Deputy Insurance Commissioner
Company Supervision
Washington Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, Washington 98501

Re: PREMIERA; Our File No. 61000-001

Dear Mr. Odiorne:

Cantilo & Bennett, L.L.P. ("C&B") has been engaged by the Office of the Insurance Commissioner of the State of Washington (the "OIC") to assist in the evaluation of a proposal by the Premera Group ("PREMERA") to change the ultimate controlling entity of PREMERA's members, which are regulated by the Insurance Commissioner of the State of Washington (the "Commissioner") pursuant to Title 48 ("Washington Insurance Code") of the Revised Code of Washington ("RCW"). Transmitted with this letter is the final report ("C&B's Final Report" or the "Final Report") of the analysis conducted by C&B at the request of the OIC. This letter explains the context of this analysis and summarizes C&B's views based on the Proposed Transaction as currently constituted, the information made available thus far, and the final reports submitted by other consultants engaged by the OIC. Thus, this letter should serve as an executive summary (the "Executive Summary") of C&B's Final Report. Throughout this Executive Summary and C&B's Final Report (collectively referred to as "C&B's Analysis"), PREMERA's proposed conversion shall be referred to as either the "Proposed Transaction" or the "Transaction." C&B's Final Report explains the facts and information reviewed by C&B, the context of the analysis, and important assumptions and qualifications regarding C&B's conclusions. This Executive Summary must be read together with C&B's Final Report, and the OIC should not rely solely upon this Executive Summary.

ISSUES CONSIDERED

Initially, the review envisioned in C&B's engagement by the OIC (the "C&B Engagement" or the "Engagement") was contemplated to occur in two separate and distinct stages (herein referred to as "Stage One" and "Stage Two"). In Stage One, C&B was asked to provide an analysis and

opinion as to: (1) whether PREMERA has complied with the appropriate change of control filing requirements; (2) whether the Proposed Transaction is economically viable; (3) whether PREMERA has complied with applicable law, including the Washington Insurance Code, applicable Washington Administrative Code ("WAC") provisions, RCW Title 24 ("Washington Nonprofit Corporation Act"), and certain provisions of federal law;¹ and (4) whether the Proposed Transaction is fair to policyholders,² health care providers, and the public. However, the two stages have largely been combined because analysis of the Proposed Transaction has not progressed in the manner contemplated originally by the OIC. C&B has analyzed many of the Stage Two matters together with those originally envisioned as constituting Stage One. Specifically, the Stage Two issues analyzed within this Final Report include: (1) conversion-related self-dealing and conflicts of interest of PREMERA's officers and trustees; (2) the independence of the Foundation Shareholder and Charitable Organizations³ on the one hand, and PREMERA on the other hand; and (3) the stock transfer documents and the related transfer of PREMERA's fair market value. As will be seen, many of the matters identified originally as pertaining to Stage One and those pertaining to Stage Two overlap and are substantially interrelated, accounting for the decision to combine them in one Final Report.

On August 25, 2003, C&B provided the OIC, at its request, a confidential opinion and analysis regarding certain legal issues concerning the allocation of consideration in the event that the Proposed Transaction is implemented (the "Allocation Analysis"). The Allocation Analysis was not contemplated in C&B's Engagement and is not addressed in C&B's Analysis provided herewith.

LIMITATIONS & QUALIFICATIONS

C&B's Analysis is issued exclusively to the OIC, and only the OIC may rely upon it. C&B's Analysis may not be quoted, in whole or in part, without C&B's written consent, with the exception of the Executive Summary, which may be disclosed to the public in its entirety. Except to the extent expressly agreed upon as part of the Engagement, C&B will have no obligation to "bring down" or update C&B's Analysis after it is first issued.

In conducting its analysis, C&B has relied on the sufficiency and accuracy of the information provided by PREMERA, the OIC, the OIC's other consultants or advisors, and other sources. C&B's Analysis evaluates the Transaction based on information gathered and analyzed through October 15, 2003. A description of the information provided by PREMERA, which has been

¹ This third assignment of Stage One differs from our Engagement, because C&B has identified federal laws that are applicable to the OIC's review of the Transaction.

² The terms "policyholder" and "subscriber" may be used interchangeably or together throughout C&B's Analysis.

³ The terms "Foundation Shareholder" and "Charitable Organizations" are defined in the Final Report.

reviewed by C&B and the other consultants, is provided in Appendix I. In addition, C&B and the other consultants have attended numerous meetings, and participated in numerous telephone calls, with PREMERA's management, key employees, counsel, and its advisors, as well as with state officials and their advisors. Moreover, as part of its analysis, C&B has reviewed the reports provided by the other consultants and has incorporated selected excerpts in this Final Report. C&B's Analysis should be read in conjunction with the reports of the other consultants.

C&B has made diligent efforts to request, and to assist other OIC advisors in requesting and obtaining, from PREMERA, all of the information necessary for an adequate review of the relevant issues raised by the Proposed Transaction. Although PREMERA appears to have made substantial efforts to provide the information requested, many seemingly important documents have not been provided, primarily due to PREMERA's claims of attorney-client privilege or the doctrine of work-product. Judge George Finkle, the Special Master appointed by the Commissioner, conducted *in camera* reviews of these documents and issued opinions on August 22, 2003, and September 8, 2003, which sustained a majority of PREMERA's claims. The applicability of C&B's Analysis is limited to the extent that the materials withheld, if produced, would have altered C&B's conclusions.

Many of the issues considered in C&B's Analysis relate to prospective events, anticipated conduct, and possible consequences following the Proposed Transaction's hypothetical implementation. C&B has made assumptions regarding these matters, that it believes are reasonable, in light of the information provided by PREMERA and other sources. Where relevant, these assumptions are identified in this report. If prospective events or anticipated conduct differ materially from that which is assumed in C&B's Analysis, the observations and recommendations provided herein may be less applicable, or inapplicable altogether. Generally, C&B's Analysis is based on the Proposed Transaction's structure as of October 15, 2003. However, C&B notes that the OIC presented to PREMERA orally, in February 2003, a list of at least some of the OIC's initial fundamental concerns with the structure and elements of the Proposed Transaction (the "Structural Issues"). These Structural Issues are summarized in C&B's Final Report. The intent of this February presentation was to provide PREMERA an opportunity to amend the Transaction if it deemed appropriate. In addition, the OIC's other consultants and C&B have advised PREMERA throughout the review process of many of the concerns to which they believed the Proposed Transaction gave rise. However, PREMERA advised that it would not amend the Proposed Transaction before the issuance of the consultants' final reports.

On October 23, 2003, the Commissioner issued an order indicating that any changes to the Form A made after October 15, 2003 (the deadline for amendment of the Form A) need not be addressed or incorporated in the consultants' final reports. Thus, unless otherwise noted, C&B has analyzed the Form A as of October 15, 2003. If PREMERA decides to make further changes to the Form A after that date, or after the issuance of C&B's Final Report, or if it negotiates certain conditions to be imposed by the Commissioner upon approval, the observations and recommendations made herein may have limited relevance and application or be wholly inapplicable or irrelevant.

On October 3, 2003, the consultants submitted to the OIC and PREMERA draft reports expressing preliminary views regarding issues they have analyzed based on the structure of the Transaction at that time. Following review of these draft reports, Premera continued to insist that it would not amend the Form A, but asked to meet with representatives of the OIC and its consultants to discuss some of the concerns raised in the draft reports. OIC representatives agreed to such a meeting for the purpose of clarifying and simplifying issues in anticipation of the evidentiary hearing on the Proposed Transaction. The meeting took place on October 22, 2003, and included representatives of the OIC, C&B, and The Blackstone Group L.P. ("Blackstone") as well as those from PREMERA and its advisors. In the course of this meeting, possible changes to the Proposed Transaction were discussed, which might mitigate at least some of the concerns of the OIC and its consultants. The breadth of the issues considered is such that C&B does not believe that, even where possible solutions were identified, these matters should be addressed as conditions to an order approving the Proposed Transaction. If conditions sufficient to resolve all of the material concerns articulated by the consultants were included in an approval order, they would have the effect, in the aggregate, of imposing fundamental changes upon the conversion as proposed by Premera. C&B believes that it is not the office of an approval order to implement such fundamental changes. If the Commissioner concludes upon the record before him that he cannot, or should not, approve the Proposed Transaction as constituted as of October 15, 2003, without fundamental changes, the remedy, if any, lies in a new application (or an amendment of the old one), of which reasonable notice can be provided to all interested parties, and which can be subjected to adequate and integral analysis by the OIC and its advisors. It would be a disservice to the parties and the public to shortcut that process.

To the best of C&B's knowledge, no direct legal precedent exists in Washington for the analysis of many of the pertinent issues. Due to the paucity of specific case law in this and other jurisdictions, as well as the unique nature of the issues to be opined upon, a substantial portion of C&B's Analysis is based on analogous statutes and case law from this and other jurisdictions, as well as C&B's general experience in these areas. To the best of C&B's knowledge and experience, C&B's Analysis provides a reasonable evaluation of the relevant issues. C&B's Analysis is based on the law as it existed at the time of the analysis. There can be no assurance that any of the relevant law will not change prior to implementation of the Proposed Transaction, and C&B's Analysis may be less applicable, or inapplicable, to the extent of such changes.

SUMMARY OF C&B'S CONCLUSIONS

Each of the Stage One and Stage Two issues considered in C&B's Analysis is described below with C&B's conclusions. Undefined terms are defined in C&B's Final Report.

STAGE ONE

1. Has PREMERA complied with the appropriate change of control filing requirements?

- PREMERA's Form A cannot be deemed complete until the items listed in the deficiency schedule sent to PREMERA on September 10, 2003, are satisfied, including: (a) Description of Stock Ownership Plan (Exhibit G-10); and (b) Schedules 1 (Assets) and 2 (Assumed Liabilities) to Exhibit D (Exhibit G-11 to the Form A). Executive compensation plans provided after the October 15, 2003, amendment deadline cannot cure that deficiency, in part, because there has not been a reasonable opportunity for sufficient review of these plans.
- An issue that arises under applicable law, is whether the Foundation Shareholder will have "control" of New PREMERA, by virtue of the stock proposed to be conveyed as part of the Transaction. "Control" is a term specifically defined in the applicable statute, and the existence of control has substantial consequences. PREMERA suggests, inappropriately, that a Disclaimer of Control filing serves to eliminate control. Whether or not control exists (or would exist if the Proposed Transaction were implemented) depends on the elements of the Transaction. The disclaimer can do no more than describe those elements. It cannot eliminate control created by the Transaction. Thus, an appropriate explanation for the suggested absence of control would cite to the Stock Governance Agreements and other organizational documents intended to eliminate the Foundation Shareholder's control of New PREMERA. Notably, by virtue of those same and related provisions, those agreements may undermine the transfer of PREMERA's fair market value to the Foundation Shareholder and Charitable Organizations. Though Premera does not explicitly concede this point, analysis of the conversion by the OIC and its advisors has been premised on the principle that conveyance of PREMERA's full market value is a fundamental legal requirement for satisfaction of the public's stake in the company.⁴ It is evident, in any event, that PREMERA has designed the Proposed Transaction so that the Foundation Shareholder and Charitable Organizations cannot exercise the authority and control typically inherent in the level of ownership proposed for these entities. Therefore, whether or not the Stock Governance Agreements fail a fundamental legal requirement, for purposes of the public policies underlying the Holding Company Acts and other applicable law, New PREMERA should be treated as the acquiring person. And this is so even if the purported disclaimer and the restrictions do not compel that result.

⁴ In what it may view as effective avoidance of this issue, Premera concedes merely that it has agreed to convey "100% of its stock to the Foundation Shareholder, which represents the fair market value of the company upon consummation of the conversion transaction." Premera may argue that this is not a required element of the Proposed Transaction, but it clearly offers it as an inducement to its approval. Whether or not Premera agrees that it must convey its fair market value, it claims that the conversion would do so. Observations by C&B and other OIC consultants to the effect that elements of the Proposed Transaction fail to achieve this result are, therefore, clearly material to the Commissioner's determination.

2. Is the Proposed Transaction economically viable?

- While economic viability is a broad term that might encompass a variety of analyses, in the context of this Transaction, it refers primarily to the consideration proposed to be paid by the buyer (New PREMERA and its future investors) to the seller (the citizens of the State of Washington) for the sale of PREMERA. In broader terms, economic viability turns on whether the public's interest in PREMERA is safeguarded in the Proposed Transaction. In effect, that requires a determination as to whether the fair market value of PREMERA will be conveyed to the Foundation Shareholder and the Charitable Organizations, and will thereafter inure exclusively to the benefit of the public. Initially, economic viability involves the extent to which PREMERA will be able to complete a successful initial public offering ("IPO"), which depends on several factors, including whether the company follows proper procedures in the IPO. However, there are several potential negative factors that may affect the economic viability of the IPO, as defined in Blackstone's letter opinion. Moreover, even a successful IPO, properly conducted, would not guarantee that the Transaction will be economically viable in the sense described here. A variety of stock restrictions and other conditions proposed by PREMERA to be imposed on the Foundation Shareholder and Charitable Organizations are likely to reduce materially the value of the consideration received by them. That reduction may result in the aggregate consideration falling so far short of PREMERA's fair market value that the applicable legal requirement (or, by Premera's reckoning, an important element of its proposal) will not have been met.

3. Has PREMERA complied with applicable law, including the Washington Insurance Code, applicable WAC provisions, Washington Nonprofit Corporation Act, and certain federal law?

- C&B has been advised by the OIC that there do not appear to be any material issues regarding the transfer of the health care and insurance licenses and registrations of the nonprofit companies. Those transfers, therefore, are likely to be approved by the OIC if the Proposed Transaction complies with other applicable requirements.
- Although PREMERA appears to have market power in Eastern Washington, it is improbable that the Proposed Transaction would violate antitrust laws because it does not appear that it will result in an immediate increase in market share. It is possible that access to additional capital will enable PREMERA to engage in anti-competitive behavior that would not have been possible without such capital. Nothing brought to C&B's attention indicates an intent by PREMERA to engage in such behavior. It is possible that the need to satisfy investor expectations may induce PREMERA to increase premium rates, or reduce provider compensation, either or both of which may have an adverse effect on the markets in which

PREMERA operates. This issue is discussed in some depth in the Final Report and in the work of PricewaterhouseCoopers LLP ("PwC").

- PREMERA's Form D appears to satisfy the applicable informational requirements. PwC's analysis indicates that PREMERA has satisfied the Form D's substantive requirements with respect to the Cost Agreement and Management Agreement, because those agreements, as well as charges proposed for services to be performed, appear to be fair and reasonable, and the expenses incurred and payments received apparently will be allocated according to customary statutory accounting practices consistently applied. The Tax Agreement, however, does not satisfy the foregoing legal standards because one of the provisions may result in members not being reimbursed for certain tax attributes generated on a separate return basis.
- The transfer of insurance contracts between Premera Blue Cross ("PBC"), and New Premera Blue Cross Corp. ("New PBC"), and LifeWise of Washington, and New LifeWise of Washington, should not be approved as contemplated in the Proposed Transaction in the absence of express adequate assurances that the transfer will not result in adverse changes in the terms or cost of coverage. While the Proposed Transaction's documents contain no such assurance, it is likely that Premera would provide such assurances, and it would not be inappropriate to condition an approval order on such a requirement.
- In due course, New PREMERA will be required to obtain solicitation permits for the IPO and subsequent financing, which will have to be reviewed by the Commissioner to determine whether PREMERA has complied with applicable law. These permits are not included as part of the Proposed Transaction's documents, and C&B therefore cannot ascertain whether they will comply with applicable law.
- The indemnification provisions for the indemnitees of the Foundation Shareholder and the Washington Charitable Organization are far broader than the statutory provisions contained in Titles 23 and 24, RCW, and, because of their breadth, may not be in the public interest. Moreover, certain bylaws of the Washington Charitable Organization conflict with each other, and the Foundation Shareholder's presumption-of-assent requirement does not comply with statutory requirements. Premera believes that applicable law can be interpreted so as to permit what it proposes. While that may or may not be the case, the breadth of these provisions is not required by such laws. As discussed in the Final Report, on balance the public interest may be better served by narrower provisions in these areas. However, this issue is closely entwined with that of the independence of the Foundation Shareholder's governing body. Greater independence for these directors may temper the depth of concern prompted by the breadth of these protective measures.

- The Transaction would not be in the public interest if it provided that the Foundation Shareholder would engage in lobbying on behalf of Premera or Washington insurers. As currently formulated, the Proposed Transaction's documents permit that conclusion. Premera denies that it intended that result. The provision for lobbying was claimed as necessary to assure that the Foundation Shareholder would qualify as a 501(c)(4) organization under federal tax law. However, while it might have that effect, enabling the Foundation Shareholder to lobby for purposes supported by Premera is not necessary for that purpose. It is possible for the Foundation Shareholder to qualify as a 501(c)(4) social welfare organization even without requiring that it engage in substantial lobbying activities. Moreover, even if such activities are deemed desirable, they can be structured in a manner more consistent with the fundamental purposes of the Foundation Shareholder and Charitable Organizations, such as providing that the Foundation Shareholder will lobby for the interests of uninsured and underinsured populations. As is true of other related issues, independence of the Foundation Shareholder from Premera would mitigate these concerns as well.
- The Transaction is not in the public interest to the extent that it proposes to exempt the Foundation Shareholder's management and directors from the prudent-person standard of conduct. However, limiting such an exemption to the temporary concentration of Foundation Shareholder assets in New Premera stock might be appropriate under the circumstances of the Proposed Transaction.
- As currently written, PREMERA's and PBC's Plan of Distribution could be construed as suggesting that PBC does not hold any assets restricted to charitable, benevolent, or similar purposes. Thus, the plan documents should specify that all remaining PBC assets shall be transferred to PREMERA, on condition that those assets be used only for charitable, benevolent, or similar purposes, and on further condition that upon PREMERA's dissolution, those assets be transferred to the Foundation Shareholder. For PREMERA, similar language should be included with respect to the transfer of assets to New PREMERA. As currently written, the foregoing documents are not in the public interest to the extent that they permit transfers of assets for inconsistent purposes.
- In other respects, the various transfer of asset agreements appear to comply with applicable law.
- The Hart-Scott-Rodino Act probably subjects PREMERA to pre-merger notification requirements under federal law. However, the Clayton Act's substantive federal antitrust requirements probably do not apply to the Proposed Transaction, because PREMERA's market share immediately prior to, and after, the Transaction will be substantially the same.

4. Is the Proposed Transaction fair to policyholders, health care providers, and the public?

- In general, the Proposed Transaction would fail this test if it resulted in: (1) a material deterioration in the health carrier's financial viability, (2) an increase in cost, or reduction in benefits, for coverages provided, (3) any other adverse effect on availability or affordability of health care coverage, (4) adverse impact on health care providers, (5) adverse effects on competition, or (6) failure to safeguard the public's stake in the company. While other adverse consequences of the Proposed Transaction are possible which would violate the applicable standards, those most commonly observed fall in these six categories. The OIC's other consultants and C&B have analyzed the Transaction taking these considerations into account. The following observations summarize the material conclusions regarding these issues.
- The risk that PREMERA will be deemed to have experienced a "material change in structure" and the attendant loss of tax benefits, is significant as indicated by PwC's tax analysis. Thus, the Transaction may not be in the public interest due to the potential negative financial impact to the company, policyholders, and public as a result of increased federal income tax liability, unless PREMERA can demonstrate other countervailing effects.
- As demonstrated by PwC's economic impact analysis, there is a material possibility that the Transaction will have an adverse impact on premium rates or provider payments, particularly in Eastern Washington, due to pressure to satisfy investor expectations. Historically, PREMERA has not fully exited unprofitable markets, though it may have reduced its writings in some cases. With the need to respond to investor expectations, PREMERA may feel compelled to discontinue unprofitable lines of business quickly and fully.
- There is inadequate support in PREMERA's proposed uses of capital for its assertion that approving the Transaction will prevent premium increases or will prevent the reduction in provider payments which otherwise might be necessary to raise capital.
- PREMERA's assertions, that the Proposed Transaction will somehow provide a substantial benefit to the company, due to an improved risk-based capital ratio or for technological expenditure, are not supported sufficiently by substantial evidence, as indicated by Blackstone's valuation analysis. In fact, significant contrary evidence exists.
- PREMERA's outright rejection of some alternatives, such as a possible merger, causes several potential problems. First, PREMERA's arguments in favor of becoming for-profit are less persuasive. Second, the board may not have met its due

diligence duties. Third, PREMERA may have forever eliminated the Foundation Shareholder's opportunity to receive a control premium. It may be that PREMERA's directors considered other alternatives. But they imposed upon this process a requirement that any transaction preserve its independence and local control. Premera has not offered analysis demonstrating that these conditions were necessary or desirable from the perspective of its insureds or the public. It is possible for an IPO to produce proceeds equal to the company's fair market value *under certain circumstances*, even without an explicit control premium. But PREMERA has not provided analysis demonstrating that this transaction will compensate the Foundation Shareholder for the absence of a control premium.

STAGE TWO

1. Conversion-related self-dealing and conflicts of interest of PREMERA's officers and trustees:

- As discussed in PwC's executive compensation analysis, PREMERA's turnover rate for management may have been more favorable than other comparable companies. PREMERA's consideration of management retention in determining whether to convert, when there was no apparent need, raises the specter of a conflict of interest. If anticipated benefits for management and employees were not necessary to address a recruiting and retention problem, the Proposed Transaction raises the question of whether such benefits will merely enrich recipients. If so, will such enrichment come at the expense of insureds and the public? Given the lack of supporting evidence, significant weight should perhaps not be given to PREMERA's assertion that the Proposed Transaction is needed to improve management retention, due to the lack of demonstrable support for such an assertion. Therefore, it is proper for the Commissioner to consider whether the conversion was motivated in fact by a desire to provide benefits to Premera's directors and/or management.
- On October 17, 2003, PREMERA finally provided the contemplated executive compensation plans after nearly a year of requests for that information. The plans provided address benefits for two years after implementation of the conversion, but provide no guidance as to benefits to be accorded management or directors after that date. The terms of the transaction as proposed as of October 15, 2003, effectively leave the terms of subsequent plans in the hands of Premera and its successors, but not the Foundation Shareholder as the single largest shareholder of New Premera. Of course, the date of submission came after the deadline for amendment of the Form A. In fact, the plans were provided too late to permit complete analysis. Evaluation of those plans is necessary in order to determine whether they are contrary to the public interest in that they enrich management or the board at the expense of insureds and the public. Due to PREMERA's failure to provide these plans prior to the

October 15, 2003, date to amend the Form A, and because the plans only address the two-year period following the conversion, C&B and the other consultants cannot express a conclusion as to whether, these plans present a conflict of interest, or are otherwise contrary to the public interest or the interest of policyholders and insureds. As discussed in Stage One, a strong argument can be made that the Form A is incomplete without these plans.

2. The independence of the Foundation Shareholder and Charitable Organizations on the one hand and PREMERA on the other hand:

- The Foundation Shareholder, which is to receive initially the consideration to be conveyed to the public, is far from independent from PREMERA.
- Indeed, it is probable that the Foundation Shareholder will be subject to substantial influence or control by PREMERA and that, at least some of, its activities will be conducted for PREMERA's benefit. The proposed inclusion of "Independent Directors" does not alter this conclusion because they will not in fact be independent; they will be PREMERA nominees consisting of: (1) PREMERA's, PBC's, or their predecessors' current or former board members, or (2) individuals nominated by PREMERA and elected or appointed by a majority vote of the "Independent Directors."
- The proposal that the Foundation Shareholder be authorized to lobby for certain health care issues may result in efforts to utilize the Foundation Shareholder for PREMERA's benefit. The Proposed Transaction contains no safeguard against this possibility.

3. The stock transfer documents and the related transfer of PREMERA's fair market value:

- The Stock Governance Agreements contain substantial restrictions, which individually or in combination, have the effect of undermining the required transfer of PREMERA's fair market value to the Foundation Shareholder. These agreements are as follows: (a) the Stock Restrictions Agreement, (b) the Voting Trust and Divestiture Agreement, (c) the Registration Rights Agreement, (d) the Stockholder Protection Rights, (e) the Excess Share Escrow Agreement, and (f) the Indemnification Agreement. Some of the more egregious restrictions have been identified in C&B's Final Report and in Blackstone's valuation analysis.
- The Stock Restrictions Agreement does not provide for an allocation of PREMERA's assets between the states of Washington and Alaska. Without such an allocation, fair market value will not have been transferred.

- The Voting Trust and Divestiture Agreement compels the Foundation Shareholder to divest its Shares according to a predetermined schedule over a five-year period, without regard to the effect of this schedule on the interests of the Foundation Shareholder or the Charitable Organizations. Typically, provisions that compel a stockholder to divest its shares pursuant to a predetermined schedule can have a negative effect on the value of that stock, because those shares are not freely tradeable. Thus, the Foundation Shareholder will not have the ability to sell only when it deems doing so to be optimal. To that extent at least, such restrictions are not in the public interest. Moreover, the Foundation Shareholder will be required to transfer its voting rights in its Shares to New PREMERA, depriving it of any control over the company of which it will be the largest shareholder and which, at least initially, will be the Foundation Shareholder's largest asset.
- The proposed requirement that the Foundation Shareholder be liable, at least in part, for the expenses or compensation of the Trustee, and the obligation that it indemnify the Trustee, may be contrary to the interests of the public. The Trustee's services would not be required at all if PREMERA paid its fair market value to the Foundation Shareholder in cash on the effective date of the Transaction. Moreover, control of the Foundation Shareholder by PREMERA has the effect of requiring the public assets to indemnify PREMERA for its own conduct.
- The lack of independence envisioned in the Registration Rights Agreement undermines the public interest to the extent that PREMERA retains effective control of such matters as pricing, underwriter discounts, commissions, and hold-backs.
- The proposed Purchase Option for PREMERA deprives the Foundation Shareholder of investment flexibility to a degree that may further undermine the value of the stock ostensibly conveyed for the benefit of the public.
- The Stockholder Protection Rights Agreement may have the effect of further entrenching management, contrary to the public interest.
- The Indemnification Agreement unfairly places the entire burden of potential tax consequences and other liabilities, as a result of the Transaction, on the Foundation Shareholder. There is no reasonable justification for requiring the Foundation Shareholder to indemnify PREMERA with respect to any potential tax consequences or other liabilities. PREMERA is the applicant that has initiated this Transaction, and the Foundation Shareholder is unlikely to have any influence on the events potentially giving rise to a liability indemnifiable under the agreement.
- Due to the lack of productive use of the capital that PREMERA proposes to raise, the value transferred to the Foundation Shareholder may be diluted by as much as 15

percent according to Blackstone. This dilution results in a transfer of less than fair market value and is not in the public interest for this reason.

- The initial shares at an IPO are typically sold at a discount from fair market value. To the extent that PREMERA requires the Foundation Shareholder to sell shares at the IPO, PREMERA should compensate the Foundation Shareholder for the lower value received by the Foundation Shareholder.

This summary identifies significant issues raised by the Proposed Transaction as described in the Form A, supporting documents, and PREMERA's communications. Each issue is potentially complex and susceptible of divergent consequences under differing circumstances. It is impossible to predict how PREMERA will actually conduct its business following implementation of the Proposed Transaction. For example, it is possible that PREMERA will implement the conversion and thereafter conduct its business in a manner that will maximize the resulting public benefit. But the elements of the Transaction do not provide any reliable assurance of that possibility. Nor do they provide what C&B judges to be adequate safeguards against potential adverse consequences. No particular effort is made in this summary, or in the accompanying report, to describe appropriate remedial measures for the issues identified by the OIC's consultants. Some observations, however, may suggest potential solutions. Ultimately, it is PREMERA's exclusive prerogative as the applicant to design the structure of its proposed transaction. It is important to note, however, that many of these issues have been brought to the attention of PREMERA's representatives throughout the course of this review. PREMERA has steadfastly declined the opportunity to alter any element of the proposed conversion until after the draft reports were submitted to the OIC. Moreover, it elected not to amend its Form A application by the October 15, 2003, deadline ordered by the Commissioner.

Though discussions throughout the review process served to identify many areas where amendment might have avoided or remedied the concerns articulated by the OIC's advisors and staff, PREMERA simply decided not to address those concerns before the amendment deadline. If the Commissioner is required to decide whether or not to approve the Proposed Transaction as it is currently constituted, it is the view of C&B that the Form A application should be rejected as contrary to the interests of PREMERA's policyholders, insureds and members, as well as contrary to the interests of the public. This is not intended to suggest that PREMERA could not propose a conversion that would satisfy all applicable legal requirements. It is certainly possible that PREMERA could have amended its Form A in a way that would be found by the Commissioner to address satisfactorily many, if not all, of the concerns identified in this report as a result of which he might otherwise reject the Proposed Transaction. Indeed, if the current proposal is rejected, PREMERA presumably could file a new Form A, proposing a transaction that does not include the problems identified by OIC staff and consultants. But because PREMERA elected to proceed with the Proposed Transaction substantially in its original form, for all the reasons set out in this and other consultants' reports, C&B cannot recommend its approval.

The Honorable James T. Odiorne
October 27, 2003
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CANTILO & BENNETT, L.L.P.

Respectfully,

CANTILO & BENNETT, L.L.P.

Enclosures

**FINAL REPORT OF
CANTILO & BENNETT, L.L.P.**

October 27, 2003

An analysis of the

FORM A
STATEMENT REGARDING THE ACQUISITION
OF CONTROL
OF A DOMESTIC HEALTH CARRIER AND A
DOMESTIC INSURER
Premera Blue Cross, States West Life Insurance
Company, LifeWise Health Plan of
Washington, LifeWise Health Plan of Oregon, Inc.,
Premera Blue Cross Blue Shield of
Alaska, and MSC Life Insurance Company
direct or indirect affiliates of
PREMERA
BY
[New PREMERA Corp.]
Filed with the Insurance Commissioner of the State of
WASHINGTON, the ALASKA
Division of Insurance, and the OREGON Insurance
Division
Dated: September 17, 2002

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APPENDIX I: DOCUMENT PRODUCTION LOG

APPENDIX II: BLUE CROSS BLUE SHIELD CONVERSION TRANSACTIONS

FINAL REPORT OF CANTILO & BENNETT, L.L.P.

I. INTRODUCTION

CANTILO & BENNETT, L.L.P. ("C&B") has been engaged by the Office of the Washington Insurance Commissioner ("OIC") to assist in the evaluation of a proposal by PREMERA to convert from nonprofit to for-profit status, largely by changing the ultimate controlling entity of PREMERA's members, which are regulated by the Commissioner pursuant to the Washington Insurance Code. C&B's engagement, as formulated originally, contemplated that review of the proposed conversion would occur in two distinct phases, identified as "Stage One" and "Stage Two." Separate aspects of the Transaction were expected to be reviewed in each phase. Not atypically, review of the conversion proposal has been considerably more demanding than anticipated, and has taken substantially more time than envisioned in C&B's engagement agreement. As matters have evolved, the areas to be considered in the two phases of the review have overlapped substantially. As of the writing of this Final Report, it appears that Stage Two will likely consist of matters related to the implementation of the Proposed Transaction if it is approved by the Commissioner. Stage One, on the other hand, has encompassed the various matters that should be presented to the Commissioner in connection with his determination of whether the conversion complies with applicable law. Several matters originally envisioned as part of Stage Two have in fact been evaluated as part of this first phase. Stage Two matters analyzed for this report are specifically identified.

As part of its engagement, C&B has been asked to provide an analysis and opinion as to the following Stage One assignments: (1) whether PREMERA has complied with the appropriate change of control filing requirements; (2) whether the Proposed Transaction is economically viable; (3) whether PREMERA has complied with applicable law, including the Washington Insurance Code, applicable WAC provisions, the Washington Nonprofit Corporation Act, and applicable federal law; and (4) whether the Proposed Transaction is fair to policyholders, health care providers, and the public. In addition, for this Final Report, C&B has analyzed the following Stage Two assignments: (1) the conversion-related self-dealing and conflicts of interest of PREMERA's officers and trustees; (2) the independence of the Foundation Shareholder and Charitable Organizations on the one hand, and PREMERA on the other hand; and (3) the stock transfer documents and the related transfer of PREMERA's fair market value.

This Final Report should be read together with the Executive Summary with which it is submitted, and the conditions and defined terms in that summary are hereby expressly incorporated

into this Final Report. Some footnotes include citations to certain information that PREMERA or others have identified as being confidential. However, C&B has not analyzed the sufficiency of the assertions of confidentiality under applicable law. This Final Report is divided into five sections. This first section introduces the Final Report and includes a summary of the Engagement. Section II provides background information regarding the Proposed Transaction and C&B's Analysis. Section III describes the analysis of the Stage One issues. Section IV describes the analysis of the Stage Two matters that are evaluated as part of this Final Report. Section V summarizes the conclusions developed in this Final Report.

II. BACKGROUND

A. History of the Blue Cross and Blue Shield Industry

The roots of the "Blue Cross movement" are widely attributed to the efforts of Texan, Justin Ford Kimball, aimed at preventing the near collapse of University Hospital in the 1920s. In 1929, he devised and implemented one of the first, if not the first, prepaid hospital services programs, enabling Dallas, Texas, school teachers to pay 50 cents per month for basic hospital care. This program, in turn, became the first Blue Cross plan. The model was quickly copied throughout the country and was soon followed by comparable "Blue Shield" programs for prepaid physician services.¹ Over the years more than a hundred such plans evolved, all nonprofit. In due course, a Blue Cross Association and a Blue Shield Association were formed. By the mid 1980s, a wave of consolidations of the Blue Cross and Blue Shield plans emerged in many markets, though many had in fact been managed jointly more or less since their inception in the 1930s and 1940s. In fact, in 1982, the Blue Cross Association and the Blue Shield Association themselves had merged.

During the ensuing decades, these plans achieved significant, if not dominant, market positions in the regions they served. The Blue Cross and Blue Shield marks were registered and became one of the most recognized trademarks in the country (some say second only to Coca Cola). The companies experienced a number of cycles of profitability and economic challenge, but by the 1990s it became evident that many had become valuable insurers. Lured perhaps by the ability to "cash in" on this long-developed franchise, in 1994, the Blue Cross Blue Shield Association (the "BCBSA") amended its rules to permit its members to become for-profit insurers. A wave of conversions was launched promptly with the creation of WellPoint Health Networks, Inc., from what had been Blue Cross of California.

As of the date of this report, there has been a wide variety of reorganizations, conversions, mergers, and acquisitions, reducing the industry to 41 individual plans. Appendix II lists the major transactions comprising this wave of conversions. Common to most conversions has been the recognition that the companies constituted public assets, for the conversion of which the citizens of

¹ THE BLUES - A HISTORY OF THE BLUE CROSS AND BLUE SHIELD SYSTEM, Robert Cunningham III and Robert M. Cunningham, Jr., Northern Illinois University Press, 1997.

the state must be compensated. Typically, that compensation has taken the form of charitable trusts or foundations.² Early disagreement about the need for such compensation has given way to more focused debate over the details of how it should be conveyed. Against this backdrop, PREMERA filed its Form A on September 17, 2002. In the case before the Commissioner, there did not appear initially to be a disagreement as to whether PREMERA must deliver to the citizens of the States of Washington and Alaska aggregate compensation equaling the company's fair market value.³ PREMERA, however, has recently contested this apparent understanding between the parties. Nonetheless, as will be seen, PREMERA is obligated to transfer fair market value, and thus, many of the issues in this report concern how that is to be accomplished.

B. PREMERA's Current Organizational Structure

PREMERA, a nonprofit miscellaneous company, is a holding company that wholly owns Premera Blue Cross ("PBC"), a Washington nonprofit health care service contractor.⁴ PBC transacts business as a health care service contractor in Washington and Alaska. Additionally, of the companies within PREMERA's structure, PBC is the primary operating subsidiary and is licensed by BCBSA to use the Blue Cross and Blue Shield names and trademark (the "Mark") in various parts of the state.⁵ Furthermore, PBC wholly owns the following subsidiaries: (1) PremeraFirst, Inc. ("PremeraFirst"), an agent for contracting with providers, (2) Washington-Alaska Group Services, Inc. ("WAGS"), an insurance sales agency, and (3) LifeWise Healthplan of Arizona, Inc. ("LifeWise of Arizona") (known at the time of the Form A filing as MSC Life Insurance Company), a Washington for-profit insurance company.⁶

² There have been exceptions. The Merger of the Texas and Illinois plans was ruled, after extensive litigation, not to trigger a charitable trust obligation. *Abbott v. Blue Cross Blue Shield of Tex., Inc.*, 113 S.W.3d 753 (Tex. App. 2003). In some cases, the proceeds have gone to state treasuries, rather than charities. See, for example, the conversion of Trigon BCBS in Virginia.

³ While PREMERA purports not to concede that applicable law requires conveyance of its fair market value to charitable organizations, it asserts that the transaction accomplishes that very same result. For example, the Form A states at page 15 that Premera will distribute 100% of its assets to the Foundation Shareholder. In its October 15, 2003, response to C&B's Draft Report, addressing this very issue, PREMERA asserts that it "*has agreed only that it will transfer 100% of its stock to the Foundation Shareholder, which represents the fair market value of the company upon consummation of the conversion transaction.*"

⁴ Overview of New PREMERA Operations and Strategy and Rationale for Conversion, Form A: Exhibit E-7, at 8 (Oct. 18, 2002), available at [http://www.insurance.wa.gov/special/premera/filing/Exhibit E 7 10-18-02.redacted.pdf](http://www.insurance.wa.gov/special/premera/filing/Exhibit_E_7_10-18-02.redacted.pdf) [hereinafter "Business Case, Form A: Exhibit E-7"].

⁵ *Id.* at 8-9. In 1994, PBC affiliated with, and later merged with, Medical Service Corporation of Eastern Washington, and thereby, obtained the right to use the Blue Shield trademark in most of the counties in Eastern Washington.

⁶ PREMERA's Current Organizational Chart, at 0037553 (September 3, 2003) (on file with C&B).

WAGS, in turn, wholly owns the following subsidiaries: (1) LifeWise Health Plan of Washington ("LifeWise of Washington"), a Washington nonprofit health care service contractor, (2) LifeWise Assurance Company ("LifeWise Assurance") (known at the time of the Form A filing as "States West Life Insurance Company"), a Washington for-profit insurance company, (3) LifeWise Health Plan of Oregon, Inc. ("LifeWise of Oregon"), a for-profit insurance company organized in the State of Oregon ("Oregon"), (4) LifeWise Administrators, Inc. ("LifeWise Administrators"), a Washington for-profit company that provides billing and collections services to its affiliates, (5) Calypso Healthcare Solutions, Inc. ("Calypso") (known at the time of the Form A filing as Quality Solutions, Inc.), a Washington nonprofit company that provides investigation and recovery services to health plans and self-funded employer benefit plans, and (6) NorthStar Administrators, Inc. ("NorthStar"), a Washington for-profit, third-party administrator. LifeWise of Oregon wholly owns Western Benefits Administrators, Inc. ("WBA"), an inactive Oregon for-profit corporation.⁷ LifeWise of Oregon and WBA, which are domiciled in Oregon, are the only subsidiaries domiciled outside of Washington.⁸

The nonprofit health care service contractors are PBC and LifeWise of Washington (the "Nonprofit Health Carriers").⁹ PREMERA and Calypso are both nonprofit corporations that are neither health care service contractors nor insurers.¹⁰ The for-profit subsidiaries are: (1) PremeraFirst, (2) WAGS, (3) LifeWise Assurance, (4) LifeWise of Arizona, (5) LifeWise Administrators, (6) NorthStar, (7) WBA, and (8) LifeWise of Oregon.

As provided by PREMERA, its organizational chart, as of September 3, 2003, is as follows:

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* Pursuant to certain sections of the Washington Insurance Code, health care service contractors are also known as domestic health carriers.

¹⁰ Business Case, Form A: Exhibit E-7, *supra* note 4, at 8, 10.

Organizational Chart



¹¹ PREMERA, List of States Where PREMERA and Its Affiliates Have Been Licensed or Qualified to Do Business In, at 00000002 (Oct. 31, 2002) (on file with C&B).

¹³ *Id.*

¹⁵ *Id.* Calypso was known at the time of this list's preparation as Quality Solutions.

Alaska, and Oregon.¹⁶ LifeWise of Oregon is currently licensed in Oregon and Idaho.¹⁷ PremieraFirst is currently licensed in Washington and Oregon.¹⁸ WBA is inactive and is not licensed in any state.¹⁹ LifeWise of Washington and LifeWise Administrators are currently licensed only in Washington.²⁰ LifeWise of Arizona does business only in Arizona.

C. Brief Description of the Proposed Transaction

The applicant²¹ proposes to acquire control of PREMIERA and its direct and indirect affiliates. As a result of the Proposed Transaction, the Nonprofit Health Carriers will essentially convert into for-profit companies,²² in a series of transactions through a process that can be described briefly as follows: (1) PBC will convert into New Premiera Blue Cross Corp. ("New PBC"), and (2) LifeWise of Washington will convert into New LifeWise Health Plan of Washington ("New LifeWise of Washington"). The other two nonprofit companies, PREMIERA and Calypso, will also convert into New PREMIERA, Inc. ("New PREMIERA") and New Calypso Healthcare Solutions, Inc.,²³ respectively. In addition, PBC's assets related to operations in Alaska will be used initially to fund PBC-AK, a corporation that will be formed as part of the Transaction. As a result of the Proposed Transaction, [Foundation Shareholder],²⁴ a Washington nonprofit corporation (the "Foundation Shareholder") will receive 100 percent of New PREMIERA's outstanding shares (the "Shares") for distribution to [Washington Charitable Organization], a Washington nonprofit corporation (the "Washington Charitable Organization"), and [Alaska Charitable Organization], an Alaska nonprofit corporation (the "Alaska Charitable Organization"). (The Washington Charitable

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ In determining the applicant's identity under Washington law, see *infra* at section III.A.2 ("Disclaimer of Control"). For purposes of this discussion, New PREMIERA, and not the Foundation Shareholder (as both companies are defined later in this section), will be considered the applicant.

²² The term "convert," with respect to the Transaction, does not signify a specific legal statutory framework for converting from a nonprofit insurer to a for-profit insurer, because such a framework does not exist in the State of Washington. Rather, the term "convert," with respect to the Transaction, refers to the series of dissolutions and transfers of assets, whereby PREMIERA is attempting to achieve a result similar to a conversion.

²³ The Form A references a conversion of Quality Solutions into New Quality Solutions, Inc. However, C&B has assumed that the converted entity will have the name New Calypso Healthcare Solutions, Inc., because Quality Solutions changed its name to Calypso.

²⁴ Names in brackets signifies that PREMIERA has not yet designated a specific name for the entity.

Organization and the Alaska Charitable Organization are referred to collectively throughout this Final Report as the "Charitable Organizations.") Thereafter, New PREMERA contemplates that additional shares will be issued for sale to the public in an initial public offering (the "IPO"). The proceeds of those sales would be realized by New PREMERA, constituting the initial new capital that the Proposed Transaction is designed to raise.

Once New PREMERA becomes a publicly-traded company, the Foundation Shareholder, pursuant to various agreements, will sell a portion of the Shares in the public market at the IPO, and perhaps, in secondary offerings, and will distribute the proceeds to the Charitable Organizations. The various agreements that control the Foundation Shareholder's governance and the disposition of the Shares include, among other documents, the following: (1) Stock Restrictions Agreement, (2) the Voting Trust and Divestiture Agreement, (3) the Excess Share Escrow Agreement, (4) the Stockholder Protection Rights Agreement, and (5) the Registration Rights Agreement (collectively referred to as the "Stock Governance Agreements").

D. Summary of the Holding Company Acts

In a proposed change of control under Washington law, an analysis is required of the following: (1) RCW Chapter 48.31B, the "Insurer Holding Company Act" ("IHCA"), and (2) RCW Chapter 48.31C, the "Holding Company Act for Health Care Service Contractors and Health Maintenance Organizations" ("HHCA"). (The IHCA and the HHCA are collectively referred to throughout this Final Report as the "Holding Company Acts.") The IHCA applies to domestic insurer acquisitions, and the HHCA applies to acquisitions of both domestic health care service contractors and health maintenance organizations (these contractors and organizations are referred to collectively by the HHCA as "domestic health carriers"). Both the IHCA and the HHCA apply to the Proposed Transaction because PREMERA's subsidiaries include both domestic health carriers and insurers. In addition to the Holding Company Acts themselves, PREMERA is also governed by corresponding applicable regulations.²⁵ The requirements are substantially the same under the two Holding Company Acts and their corresponding regulations, so they are analyzed together, with notation of any material differences.²⁶

In sum, the Commissioner is required to approve the Transaction unless he makes one or more of the following fact-findings: (1) after the change of control, the domestic health carrier

²⁵ See, e.g., RCW 48.31B.015(2) (specifying information required to be filed with the Commissioner in the event of a merger or acquisition with a domestic insurer); RCW 48.31C.030(2) (specifying information required to be filed with the Commissioner in the event of a merger or acquisition with a domestic health carrier); WAC 284-18-910 (providing the Form A to be used to satisfy the filing requirements in event of a merger or acquisition with a domestic insurer); WAC 284-184-910 (providing the Form A to be used to satisfy the filing requirements in the event of a merger or acquisition with a domestic health carrier).

²⁶ Generally, the HHCA's statutory language, such as referring to health carriers rather than insurers, will be used in this Final Report unless otherwise noted.

would not be able to satisfy a domestic health carrier's registration requirements; (2) there is substantial evidence that the acquisition would substantially lessen competition or tend to create a monopoly in insurance in Washington; (3) the acquiring party's financial condition is such as might jeopardize the health carrier's financial stability or prejudice its subscribers' interests; (4) the plans or proposals that the acquiring party has to liquidate the specific health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to the health carrier's subscribers, and not in the public interest; (5) the competence, experience, and integrity of those persons who would control the health carrier's operations are such that it would not be in the interest of the health carrier's subscribers and of the public to permit the acquisition of control; or (6) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.²⁷

E. Commissioner's Standard of Review

The burden of determining whether a change of control meets the legal requirements of the Holding Company Acts rests upon the Commissioner. That is, the Commissioner must approve the Transaction unless he makes a fact-finding that one or more of the Holding Company Acts' six adverse criteria exist(s) with respect to the Transaction. PREMERA is not required to put forth evidence establishing that the Holding Company Acts' six criteria for disapproving a Transaction do not exist. However, if the Commissioner makes a determination that sufficient evidence exists to disapprove the Transaction, based on at least one of the six criteria, then, as a practical matter, PREMERA must rebut the Commissioner's finding.²⁸

The Washington legislature has codified the standard by which the judiciary may review an agency order. A court may overturn the agency's decision only if it determines one of the following:

- (a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;
- (b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
- (c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

²⁷ See RCW 48.31C.030(5)(a)(i), (5)(a)(ii), (5)(a)(ii)(C)(I)-(IV) (enumerating the six potential disqualifying findings with respect to a domestic health carrier under the HHCA); *see also* RCW 48.31B.015(4)(a)(i)-(vi) (enumerating the same with respect to a domestic insurer under the IHCA).

²⁸ See *Blue Cross and Blue Shield of Kansas v. Praeger*, No. 89,075, 2003 Kan. LEXIS 481, at *85 (stating that the Commissioner did not improperly shift the burden of proof to the applicant by merely weighing the evidence and finding that the evidence provided by the insurance department's consultant was more weighty and persuasive than that of the applicant).

- (d) The agency has erroneously interpreted or applied the law;
- (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;
- (f) The agency has not decided all issues requiring resolution by the agency;
- (g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;
- (h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or
- (i) The order is arbitrary or capricious.²⁹

F. Scope of the Consultants' Review

In order to assist the OIC in the Proposed Transaction's evaluation, the OIC has retained C&B to provide legal services, PricewaterhouseCoopers LLP ("PwC") to provide actuarial, accounting, tax, executive compensation and economic impact services, and The Blackstone Group L.P. ("Blackstone") to provide valuation services. In addition to the consultants retained by the OIC, the Washington Office of the Attorney General (the "Attorney General") has retained the services of Dr. Keith Leffler, Ph.D to provide supplemental input on antitrust issues (C&B, PwC, Blackstone, and Dr. Leffler are referred to collectively as the "Washington Consultants"). In addition, a simultaneous proceeding in Alaska has been ongoing, and the Alaska Division of Insurance ("ADI") has retained the services of LeBoeuf, Lamb, Greene & MacRae L.L.P. ("LLGM"), Signal Hill Capital Group, LLC ("SHCG"), Redden & Anders, Ltd. ("R&A"), and Navigant Consulting, Inc. ("Navigant") (formerly known as Peterson Consulting) to provide services to the ADI that are similar to the services provided by the Washington Consultants to the OIC. (LLGM, SHCG, R&A, and Navigant are referred to collectively as the "Alaska Consultants." The Washington Consultants and Alaska Consultants are referred to collectively as the "Consultants," and the OIC and ADI are referred to collectively as the "Regulators.") The Consultants and Regulators have worked closely with each other in order to maximize the efficiency and

²⁹ RCW 34.05.570(3).

effectiveness of the review of the Transaction. Although the Washington Consultants and the Alaska Consultants have coordinated their review where possible, their conclusions may differ because each group has conducted its own independent analysis for each state. The Washington Consultants provide an integral role in evaluating legal and factual issues raised by this Transaction, which are analyzed within the scope of their engagements as described below.

1. PricewaterhouseCoopers LLP

PwC's final reports, which are dated October 27, 2003, provide analyses of the following areas: accounting, economic impact, tax, and executive compensation. The accounting report analyzes PREMERA's accounting controls as described in greater detail on Appendix I of that report.³⁰ The economic impact report analyzes the following issues: (1) the impact on policyholder coverage if the Transaction is completed; (2) the impact on health care providers; and (3) the impact of the Transaction on the insurance marketplace.³¹ More specifically, with respect to the economic impact report, PwC was instructed by the OIC as follows:

- (1) Obtain a copy of the Accenture Study referenced in the business plan and review the study for reasonableness of the items relied upon by PREMERA in the business plan;
- (2) Analyze current product pricing structure, *i.e.*, underpricing;
- (3) Assess whether reserves are adequate;
- (4) Assess whether prospective rate increases are realistic and adequate;
- (5) Assess whether prospective estimates of membership increases are reasonable without acquisitions or underpricing premium;
- (6) Analyze cost estimates for the development of new products;
- (7) Review profitability of current product mix and compare with proposed product mix;
- (8) Assess whether a conversion to for-profit status will reduce the need to increase premiums; and

³⁰ PwC, Accounting and Tax Evaluation of Proposed Conversion of PBC, Final Report, at Appendix I (Oct. 27, 2003) (on file with C&B) [hereinafter "PwC Accounting Report"] [CONFIDENTIAL].

³¹ PwC, Economic Impact Analysis of the Proposed Conversion of PBC, at 1 (Oct. 27, 2003) (on file with C&B) [hereinafter "PwC Economic Impact Report"] [CONFIDENTIAL].

- (9) Assess how for-profit status will affect providers.³²

The tax report analyzes the following issues:

- (1) Whether the Transaction would be treated as a tax-free reorganization;
- (2) The possible loss of BCBS federal income tax benefits;
- (3) Restrictions of tax attributes under I.R.C. § 382;
- (4) Tax issues associated with the Foundation Shareholder/Charitable Organizations;
- (5) Increase in Alaska's premium taxes;
- (6) State tax matters in Washington; and
- (7) The Indemnification Agreement.³³

The executive compensation report analyzes, *inter alia*, the following issues:

- (1) Whether the conversion unjustly enriches any officer, outside director, or other agent or employee of PREMIERA;
- (2) Whether executive compensation and benefit practices found at PREMIERA are consistent with "best practices" in the industry;
- (3) Whether the conversion is necessary for strengthening the company's employee retention;
- (4) Current, pre-conversion compensation and benefit levels and practices;
- (5) Post-conversion compensation and benefit levels and practices; and
- (6) The proposal for share reserve and grant allocation.³⁴

³² *Id.* at 1-2.

³³ PwC, Report to the OIC on Tax Matters in Connection with the Proposed Conversion of PREMIERA, at 3-6 (Oct. 27, 2003) (on file with C&B) [hereinafter "PwC Tax Report"] [CONFIDENTIAL].

³⁴ PwC, Executive Compensation Review: Competitiveness and Reasonableness of PREMIERA Practices, at 3 (Oct. 27, 2003) (on file with C&B) [hereinafter "PwC Executive Compensation Report"] [CONFIDENTIAL].

2. The Blackstone Group L.P.

Blackstone's final report and opinion letters dated October 27, 2003, provide analyses as to the following issues:

- (1) Whether there exists a legitimate rationale for the recommendation that PREMERA undergo a conversion;
- (2) Whether PREMERA could reasonably be expected to continue as a viable nonprofit company without converting;
- (3) Whether PREMERA's capital needs might be satisfied by means other than an equity offering, such as a merger or strategic alliance, issuance of debt instruments, or organic growth;
- (4) The potential implications that the current environment for raising capital or debt may have on cost and availability;
- (5) A general assessment of the market conditions for issuing capital or debt;
- (6) Whether the arguments advanced by the applicants in favor of the Proposed Transaction are supported by verifiable industry trends and experience;
- (7) Whether a public market valuation of [PREMERA] through a public offering is the most appropriate method of valuation, including a discussion of several valuation considerations, factors, and methodologies;
- (8) Whether the contemplated public offering is structured in a manner comparable to those of prior transactions and consistent with existing market conditions in order to optimize value;
- (9) Whether the Proposed Transaction is structured so as to optimize the value of the Shares and minimize potential dilution;
- (10) Whether the arguments advanced by the applicants in favor of the Proposed Transaction are complete and based upon reasonable facts and assumptions; and

- (11) Whether and how the valuation of the Shares would be impacted with and without the Mark.³⁵

G. Structural Issues

In February 2003, the Regulators informed PREMERA that their preliminary review of the Proposed Transaction had revealed several "Structural Issues" inherent in the Proposed Transaction of substantial concern in the context of the applicable statutory standards. The Structural Issues were viewed as so material or significant as to warrant communicating them to PREMERA before the analyses of the Regulators and Consultants were complete. The intent of the communication was to enable PREMERA to reevaluate certain elements of the Proposed Transaction early in the review process. PREMERA was thus provided an opportunity to revise elements of the Proposed Transaction giving rise to the Structural Issues or other matters, so that these revisions could be incorporated in the Consultants' review early in the process. Moreover, and perhaps more importantly, in the absence of satisfactory responses to the Structural Issues, PREMERA was given notice that a substantial probability existed that the Regulators or the Consultants would conclude that the Proposed Transaction did not comply fully with applicable legal requirements. The Structural Issues were provided orally to PREMERA near the end of February 2003, but the Proposed Transaction has not been amended since that date. Because PREMERA has not revised the Proposed Transaction in response to the Structural Issues, this Final Report is based on the Proposed Transaction's structure as of the latest, amended Form A, dated October 25, 2002.

The following is a description of the Structural Issues brought to PREMERA's attention and described more fully in the appropriate sections of this Final Report. First, the Regulators identified the Structural Issues relating to consideration. The Regulators suggested that PREMERA consider making changes or providing assurances as follows: (1) provide unequivocal assurance that PREMERA's fair market value would be conveyed to the Charitable Organizations; (2) amend the Transaction to provide for the separation of the Alaska and Washington Shares of the consideration *ab initio*, so that if the current approach were retained, there would be two Foundation Shareholders and two Charitable Organizations, one each for Alaska and Washington; or, if a structure were to be adopted that eliminated the Foundation Shareholder, then the consideration should be delivered directly to the two Charitable Organizations; (3) include adequate measures to assure that the consideration will be structured to take into account potential reductions in fair market value due to the stock restrictions (including those related to liquidity, governance, and marketability) that are included in the Stock Governance Agreements; and (4) explain how fair market value will be maintained in light of the options that permit PREMERA to repurchase the Shares, considering that such options allow PREMERA to "time the market" at the Charitable Organizations' expense, while unduly exposing the Charitable Organizations to the adverse economic effect of such market-timing.

³⁵ Blackstone, Valuation and Fairness of the Proposed Conversion, at 16 (Oct. 27, 2003) (on file with C&B) [hereinafter "Blackstone Valuation and Fairness Report"] [CONFIDENTIAL].

Second, the Regulators outlined the Structural Issues regarding the Foundation Shareholder. With respect to these issues, the Regulators suggested that PREMERA consider making changes or providing assurances as follows: (1) revise the Proposed Transaction so that the Foundation Shareholder (if one is retained) and Charitable Organizations are independent and free from the control of PREMERA and its successors in all respects; (2) assuming that appropriate revisions are made, eliminate the Disclaimer of Control;³⁶ (3) comment on whether (and if so, why) the Transaction should not make provision to prevent all lobbying, campaigning, or other political activity by the Charitable Organizations or the Foundation Shareholder (if one is retained); and (4) if the Proposed Transaction continues to provide for the consideration to consist solely of stock, develop an advance funding mechanism to provide the Charitable Organizations with some immediate liquidity with which to commence their organizational and operational activities.

Third, the Regulators suggested that PREMERA consider removing the Indemnification Agreement and similar provisions in any other documents in their entirety because no articulated rationale could be discerned for requiring either the Foundation Shareholder or the Charitable Organizations to indemnify PREMERA.

Fourth, the Regulators suggested that PREMERA consider establishing a reasonable deadline, within which the plan must be implemented and any IPO must be closed following the Commissioner's approval (if any), as well as adopting a requirement that there be no material changes in PREMERA between the approval date (if any), the Proposed Transaction's implementation, and the IPO's closure.

Fifth, the Regulators identified Structural Issues regarding regulatory matters, taxes, and compensation benefit plans.

H. Preliminary Conclusion

Based on the information reviewed to date, it is the view of the OIC's consultants that the Proposed Transaction should be disapproved under at least some of the criteria of the Holding Company Acts. Each is considered separately. As explained in the following paragraphs, there are substantial indications that the Proposed Transaction does not meet the applicable requirements:

(1) After the change of control, the domestic health carrier would not be able to satisfy a domestic health carrier's registration requirements.

- • PREMERA seems to have satisfied this requirement.

(2) There is substantial evidence that the acquisition would substantially lessen competition or tend to create a monopoly in insurance in Washington.

³⁶ The term "Disclaimer of Control" is defined *infra* at section III.A.2.

- • Dr. Leffler, the consultant for the Attorney General's office, has advised the OIC that PREMERA has market power, and thus, may use that power to increase premiums or reduce provider rates in Eastern Washington. The Transaction will not, in and of itself, cause an increase in PREMERA's market share.

(3) The acquiring party's financial condition is such as might jeopardize the health carrier's financial stability or prejudice its subscribers' interests.

- • While PREMERA's financial viability does not appear to be endangered by the Proposed Transaction, PwC has determined that it presents significant risk that PREMERA will be deemed to have experienced a "material change in structure" and therefore lose entitlement to certain federal income tax benefits. To that extent, the Transaction may not be in the interest of policyholders and the public due to the potential negative financial impact on the company.

(4) The plans or proposals that the acquiring party has to liquidate the specific health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to the health carrier's subscribers, and not in the public interest.

- • PREMERA's proposal for indemnification of PREMERA to be provided by the Foundation Shareholder and the Washington Charitable Organization is far broader than the statutory provisions detailed under Titles 23 and 24, RCW, or is otherwise not in the public interest. That indemnity obligation may reduce significantly the value of assets conveyed to the Foundation Shareholder and Charitable Organizations.
- • Certain bylaws of the Washington Charitable Organization conflict with each other, and the Foundation Shareholder's required presumption of assent does not comply with statutory requirements, or at least is far broader than the statutory provisions. To that extent at least, the presumption of assent may not be in the public interest.
- • The proposal that the Foundation Shareholder engage in lobbying permits a requirement that it conduct activities on behalf of PREMERA or Washington insurers, which is likely not in the public interest. Though PREMERA may disclaim any such intent, the documents by which the Proposed Transaction is to be implemented certainly do not preclude that result.
- • The proposed exemption from the "prudent person rule" standard of conduct for the Foundation Shareholder's management is unnecessary and not in the public interest. If applied narrowly and exclusively to the temporary concentration of the Foundation Shareholder's assets in New PREMERA stock, however, the proposed exemption may be sensible under the circumstances.

- • PREMERA's and PBC's Plans of Distribution do not require that all remaining assets be transferred to PREMERA only for charitable, benevolent, or similar purposes, and on dissolution, to the Foundation Shareholder.
- • PwC has determined that the need to satisfy investor expectations may induce PREMERA to raise premium rates for individual and small group subscribers, or to reduce provider compensation, in Eastern Washington, where it has market power.
- • As in all such conversions, the Consultants recommend particular attention to the probable effect of the Proposed Transaction upon accessibility, affordability, and availability of health insurance in Washington, particularly for the disadvantaged, uninsured, and underinsured. To the extent that the Proposed Transaction may have an adverse effect, it is important to ascertain whether it will produce salutary balancing effects. For example, will PREMERA offer reasonable products designed to appeal to the uninsured and underinsured? What will be the effect on such availability and affordability that can reasonably be expected from the consideration to be realized by the Foundation Shareholder? Historically, PREMERA has not fully exited unprofitable markets, though it may have reduced its writings in some cases. With the need to respond to investor expectations, PREMERA may feel compelled to discontinue unprofitable lines of business quickly and fully. Moreover, the evidence is inconclusive as to whether funds contributed to foundations in past conversions have been able to provide benefits to the community that offset sufficiently the negative effects produced by the conversion.
- • The transfer of insurance contracts between PBC and New PBC, and LifeWise of Washington and New LifeWise of Washington, should not be approved in the absence of express adequate assurances that the transfer will not result in adverse changes in the terms or cost of coverage.
- • The Foundation Shareholder proposed in the first instance to receive the consideration for the public's stake is far from independent from PREMERA. PREMERA's anticipated influence upon, and control of, the Foundation Shareholder's management give rise to substantial concern about the protection of the public assets (shares of New PREMERA) to be managed by the Foundation Shareholder.
- • The Stock Restrictions Agreement does not provide for an allocation of PREMERA's assets between the states of Washington and Alaska. Without such an allocation, fair market value will not have been transferred.
- • The Voting Trust and Divestiture Agreement will force the Foundation Shareholder to divest its Shares according to a predetermined schedule over a five-year period, which may not permit the trading of those Shares so as to optimize the value of

charitable assets. Typically, provisions that compel a stockholder to divest its shares pursuant to a predetermined schedule would have a negative effect on the value of that stock to the extent that it is not freely tradeable.

- • The Foundation Shareholder will be required to transfer its voting rights to New PREMERA. This will further reduce its ability to protect and optimize the value of the charitable assets.
- • The lack of independence envisioned in the Registration Rights Agreement undermines the public interest to the extent that PREMERA retains effective control of such matters as pricing, underwriter discounts, commissions, and holdbacks.
- • The proposed Purchase Option for PREMERA deprives the Foundation Shareholder of investment flexibility to a degree that may further undermine the value of the stock ostensibly conveyed for the benefit of the public.
- • The Stockholder Protection Rights Agreement may have the effect of entrenching management, contrary to the public interest.
- • The Indemnification Agreement unfairly places the entire burden of potential tax consequences and other expenses, as a result of the Transaction, on the Foundation Shareholder. The Foundation Shareholder is unlikely to have any influence on the events potentially giving rise to a liability indemnifiable under the agreement.
- • Due to the lack of productive use of the capital that PREMERA proposes to raise, the value transferred to the Foundation Shareholder may be diluted by as much as 15 percent according to Blackstone. This dilution results in a transfer of less than fair market value and is not in the public interest for this reason.
- • The initial shares at an IPO are typically sold at a discount from fair market value. To the extent that PREMERA requires the Foundation Shareholder to sell shares at the IPO, PREMERA should compensate the Foundation Shareholder for the lower value received by the Foundation Shareholder.

(5) The competence, experience, and integrity of those persons who would control the health carrier's operations are such that it would not be in the interest of the health carrier's subscribers and of the public to permit the acquisition of control.

- • PREMERA has adopted plans intended to enhance management retention without providing evidence of a need for such plans, could raise the specter of a conflict of interest. As discussed in PwC's draft executive compensation analysis, PREMERA's turnover rate for management was more favorable than other comparable companies. PREMERA challenges this assertion and PwC's Final

Executive Compensation report acknowledges this challenge. The disagreement (which may largely turn on methodology) creates a material question of fact. PREMERA's consideration of management retention in determining whether to convert, if there was no apparent need, would raise the specter of a conflict of interest. If anticipated benefits for management and employees were not necessary to address a recruiting and retention problem, the Proposed Transaction raises the question of whether such benefits will merely enrich recipients. If so, will such enrichment come at the expense of insureds and the public? Given the lack of supporting evidence, significant weight should perhaps not be given to PREMERA's assertion that the Proposed Transaction is needed to improve management retention, due to the lack of demonstrable support for such an assertion. Therefore, it is proper for the Commissioner to consider whether the conversion was motivated in fact by a desire to provide benefits to Premera's directors and/or management.

- • On October 17, 2003, PREMERA finally provided the contemplated executive compensation plans, nearly a year after OIC consultants began requesting them in order to determine whether proposed benefits could be viewed as sufficiently excessive to be considered self-dealing, or a conflict of interest, of sufficient magnitude to make the Proposed Transaction contrary to the public interest. The plans provided address benefits for two years after implementation of the conversion, but provide no guidance as to benefits to be accorded management or directors after that date. The terms of the transaction as proposed as of October 15, 2003, effectively leave the terms of subsequent plans in the hands of Premera and its successors, but not the Foundation Shareholder as the single largest shareholder of New Premera. Of course, the date of submission came after the deadline for amendment of the Form A. In fact, the plans were provided too late to permit complete analysis. Evaluation of those plans is necessary in order to determine whether they are contrary to the public interest in that they enrich management or the board at the expense of insureds and the public. Due to PREMERA's failure to provide these plans prior to the October 15, 2003, date to amend the Form A, and because the plans only address the two-year period following the conversion, C&B and the other Consultants cannot express a conclusion as to whether, these plans present a conflict of interest, or are otherwise contrary to the public interest or the interest of policyholders and insureds. As discussed in Stage One, a strong argument can be made that the Form A is incomplete without these plans.

(6) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

- • As explained above, there are a variety of ways in which the Proposed Transaction can be found to be adverse to the insurance-buying public. The Commissioner should consider whether the anticipated benefits of the Transaction, if sufficient evidence exists to support those benefits, will compensate for its adverse effects. Some potential benefits are considered here.

- • There is inadequate support in PREMERA's proposed uses of capital for its assertion that approving the Transaction will prevent premium increases or will prevent the reduction of provider payments which otherwise might be necessary to raise capital.
- • PREMERA's assertions, that the Proposed Transaction will somehow provide a substantial benefit to the company due to an improved risk-based capital ("RBC") ratio or for technological expenditure, are not supported by substantial evidence. In fact, significant contrary evidence exists.
- • PREMERA's rejection of some possible alternatives, such as a possible merger, gives rise to certain concerns. First, PREMERA's arguments in favor of becoming for-profit are unpersuasive. Second, the board may not have met its due diligence duties. Third, PREMERA may have eliminated permanently the Foundation Shareholders' opportunity to receive a control premium. It may be that Premera's directors considered other alternatives. But they imposed upon this process a requirement that any transaction preserve its independence and local control. Premera has not offered analysis demonstrating that these conditions were necessary or desirable from the perspective of its insureds or the public. It is possible for an IPO to produce proceeds equal to the company's fair market value *under certain circumstances*, even without an explicit control premium. But Premera has not provided analysis demonstrating that this transaction will compensate the Foundation Shareholder for the absence of a control premium.

In addition to the foregoing substantive requirements under the Holding Company Acts, the Form A cannot be considered complete until the deficiencies identified (or to be identified) by the Commissioner have been satisfied, which include: (1) the executive compensation plans, and (2) the schedule of assets and liabilities it intends to transfer to PBC-AK. Although the executive compensation plans have been provided, it is unclear whether that submission is complete because they were delivered untimely.

III. STAGE ONE

A. Change of Control: Filing Requirements

1. General Requirements

In a proposed change of control, the acquirer must file a Form A with the OIC.³⁷ PREMERA filed a Form A on September 17, 2002, and amended the Form A on October 25, 2002. The Holding Company Acts provide, in relevant part, that:

³⁷ RCW 48.31B.015(2), RCW 48.31C.030(2); *see also* WAC 284-18-910 and 284-184-910 (providing formats for the statutorily required information in a form known as the Form A).

The [C]ommissioner shall approve an exchange or other acquisition of control referred to in this section within sixty days after he or she declares the statement filed under this section to be complete and if a hearing is requested by the [C]ommissioner or either party to the transaction, after holding a public hearing. Unless the [C]ommissioner declares the statement to be incomplete and requests additional information, the statement is deemed complete sixty days after receipt of the statement by the [C]ommissioner. If the [C]ommissioner declares the statement to be incomplete and requests additional information, the sixty-day time period in which the statement is deemed complete shall be tolled until fifteen days after receipt by the [C]ommissioner of the additional information. If the [C]ommissioner declares the statement to be incomplete, the [C]ommissioner shall promptly notify the person filing the statement of the filing deficiencies and shall set forth with specificity the additional information required to make the filing complete.³⁸

a. Completeness of the Form A

The Honorable Paula Casey, of the Superior Court of the State of Washington, in and for the County of Thurston, issued an opinion on the interpretation of this statute on September 5, 2003. The court interpreted this provision to mean that the Form A must be deemed complete regardless of whether all the information necessary for the Commissioner's review under the Holding Company Acts has been produced by the applicant, unless the Commissioner can identify with particularity which Form A statements have not been satisfied. Although the OIC does not necessarily agree with Judge Casey's ruling, aside from those items identified as privileged by Judge Finkle, the Consultants appear to have received substantially all the information required to evaluate the Transaction, with the exception of certain key items identified by the Commissioner.³⁹ Specifically, PREMERA's Form A cannot be deemed complete until the deficiencies identified by the Commissioner have been satisfied, which include: (1) the submission of the stock ownership plans that New PREMERA intends to adopt; and (2) the schedule of assets and liabilities it intends to transfer to PBC-AK. C&B cannot predict the materiality of these documents, or the impact these documents would have had on this Final Report had they been produced in time to be considered fully.⁴⁰ However, the Regulators and Consultants requesting them have indicated that they are

³⁸ RCW 48.31C.030(4); *see also* RCW 48.31B.015(4)(b) (setting forth substantially similar requirements under the IHCA). However, the IHCA does not state that the Commissioner may request additional information.

³⁹ Memorandum Regarding Deficiencies in PREMERA's Form A Statement, at 2-3 (Sept. 12, 2003) *available at* http://www.insurance.wa.gov/special/premera/filing/Form_A_Deficiency_Memo91203.pdf [hereinafter "Deficiency Memorandum"].

⁴⁰ As noted above, PREMERA provided executive compensation plans on October 17, 2003. These plans, however, address only those benefits to be awarded during the first two years following conversion. Moreover, as provided they are not complete (omitting for example, the number of shares to be awarded). And, the late date on which they were provided precludes adequate analysis of their provisions.

potentially material to the review process. Thus, without the information listed above, the Form A should not be considered complete.

b. Identity of the Acquiring Party

The Proposed Transaction envisions conveyance of all of PREMERA's stock to the Foundation Shareholder. Typically, that would make the Foundation Shareholder the acquiring party. However, PREMERA has gone to great lengths to assure that the Foundation Shareholder, despite holding most of PREMERA's stock, will not be able to exercise control over PREMERA's operations. For example, the Foundation Shareholder's voting rights are severely restricted according to the Voting Trust and Divestiture Agreement. Indeed, although the Foundation Shareholder will retain an economic interest in New PREMERA, the Voting Trust and Divestiture Agreement effectively delegate the voting power of the Shares to a trustee, who will generally be required to vote as directed by New PREMERA's Board of Directors – such as when electing or removing directors. Therefore, PREMERA points out that the Foundation Shareholder actually will not have the ability of a typical majority shareholder to direct New PREMERA's management,⁴¹ and the Foundation Shareholder will not have a business relationship with New PREMERA because the Foundation Shareholder's principal activity will be to promote the health and welfare of Washington's and Alaska's citizens.⁴² The plan documents, therefore, include a disclaimer of the Foundation Shareholder's control of PREMERA. The effect of this strategy, however may create an ironic problem. As will be seen, a persuasive argument can be made that the Proposed Transaction fails to deliver adequate consideration to the proper charitable entity, unless the Foundation Shareholder receives, *inter alia*, sufficiently unrestricted stock. But, if the stock delivered to the Foundation Shareholder is sufficiently unrestricted, it probably cannot disclaim control (as discussed in the next subsection). Nonetheless, as also discussed in the next subsection, the public policy underlying the relevant statutes may be advanced most effectively by treating New PREMERA as the acquiring person, much as suggested by PREMERA. The reality is that applicable BCBSA restrictions may preclude exercise by the Foundation Shareholder of the degree of control necessary to render it the acquiring party. The Proposed Transaction is structured so that current management will remain in control, although as management of New PREMERA.

2. Disclaimer of Control

Before analyzing the degree to which the Form A complies with the requirements of the Holding Company Acts, it is important to consider which entity is required to file the Form A. The

⁴¹ Disclaimer of Control, Form A: Exhibit A-5, at 3 (Sept. 17, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitA-5.pdf> [hereinafter "Disclaimer of Control, Form A: Exhibit A-5"].

⁴² *Id.*

Holding Company Acts clearly require that the filing be made by the acquiring person.⁴³ PREMERA suggests that New PREMERA, and not the Foundation Shareholder, is the appropriate acquiring person with respect to the Form A because the Foundation Shareholder will have disclaimed control of New PREMERA.⁴⁴

However, PREMERA's position appears to misapply or misinterpret this section. A disclaimer of control is intended to permit an appropriate party to *demonstrate* that, in actual fact, it does not have (or should not be deemed to have) "control" of an insurer (or health care service contractor), as such term is used in the Holding Company Acts. Under the HHCA, "control" is defined as:

the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities, voting rights, by contract other than a commercial contract for goods, nonmanagement services, a debt obligation which is not convertible into a right to acquire a voting security, or otherwise, unless the power is the result of an official position with or corporate office held by the person.⁴⁵

Moreover, control can be either temporary or permanent.⁴⁶ Control is presumed to exist, for a for-profit person, "if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person."⁴⁷ However, "this presumption may be rebutted by a showing that control does not exist in fact."⁴⁸ A disclaimer of control of a health carrier may be filed, which "fully discloses all material relationships

⁴³ See RCW 48.31C.030(1) ("No person may acquire control of a domestic health carrier unless the person has filed with the [C]ommissioner and has sent to the health carrier a statement containing the information required by this section. . . ."); RCW 48.31B.015(1) ("No person may enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or person controlling a domestic insurer unless . . . the person has filed with the [C]ommissioner and has sent to the insurer, a statement containing the information required by this section . . .").

⁴⁴ See PREMERA's original Form A, at 4 (Sept. 17, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/9-17-02NewPremeraFormA.pdf> [hereinafter "Form A"].

⁴⁵ RCW 48.31C.010(3); cf. RCW 48.31B.005(2) (providing the definition under the IHCA). The IHCA is substantially the same, except the IHCA's definition of control does not include "voting rights" or "a debt obligation which is not convertible into a right to acquire a voting security."

⁴⁶ RCW 48.31C.010(3)(c). A similar provision does not exist under the IHCA.

⁴⁷ RCW 48.31C.010(3)(a); RCW 48.31B.005(2) (providing the exact same language under the IHCA).

⁴⁸ RCW 48.31C.010(3)(a); see also RCW 48.31B.005(2) (providing similar language under the IHCA). The statutory authority for a Disclaimer of Control is embedded in the HHCA's definition of "control," but a corresponding WAC provision for the filing of a Disclaimer of Control also exists. See WAC 284-18-430 (providing this disclaimer for insurance holding companies); WAC 284-18A-410 (providing the same disclaimer for health carriers).

and bases for affiliation between the person and the health carrier as well as the basis for disclaiming the control”⁴⁹ (the “Disclaimer of Control” or the “Disclaimer Authority”). After making specific findings of fact, the Commissioner may: “(i) Allow a disclaimer; or (ii) Disallow a disclaimer notwithstanding the absence of a presumption to that effect.”⁵⁰

This provision does not provide an independent mechanism for surrendering such control. Whether or not a party has sufficient “control” of another must be determined from the applicable facts, principally the organizational and contractual documents governing the relationship between that party and the domestic health carrier. On its surface, the Disclaimer of Control application filed by PREMERA does not purport to use the Disclaimer Authority as the mechanism to surrender control. The application explains that the presumption that the Foundation Shareholder controls New PREMERA through its 100 percent ownership of its stock is rebutted through the elimination of control by the stock restrictions *as a matter of fact*. Despite this seemingly appropriate language in PREMERA’s Disclaimer of Control filing, the Form A itself states:

Although the Foundation Shareholder will own 100 percent of the initial capital stock of New PREMERA pursuant to the Plan of Conversion, *it disclaims “control”* of New PREMERA and the Acquired Companies within the meaning of Section 48.31B.005(2) and Section 48.31C.010(3) of the RCW, Section 21.22.200(3) of the AS and Section 732.548(2) of the ORS.⁵¹

This statement and other similar statements seem to imply that the Disclaimer of Control itself is what eliminates control, which as discussed previously, is an inappropriate use of the Disclaimer Authority. An appropriate explanation would cite to the Stock Governance Agreements and other organizational documents as eliminating the Foundation Shareholder’s control of New PREMERA.

Related issues are whether the restrictions of the Stock Governance Agreements and other organizational documents are effective under the Holding Company Acts or other applicable law, and the impact such effectiveness, or lack thereof, has on the Disclaimer of Control. If these restrictions are effective, then it may be true that the Foundation Shareholder will lack control. Thus, the presumption that the Foundation Shareholder has control may be rebutted, which may enable a finding by the Commissioner that the Foundation Shareholder does not have control pursuant to the Disclaimer Authority. However, in no event does the Disclaimer Authority justify the effectiveness of the Stock Governance Agreements. As will be seen *infra* at section IV.C, the restrictions at issue may prevent the Foundation Shareholder, or the proposed Charitable Organizations, from receiving PREMERA’s fair market value. To that extent, at least, the Stock

⁴⁹ RCW 48.31C.010(3)(a).

⁵⁰ *Id.*

⁵¹ Form A, *supra* note 44, at 4 (emphasis added). Substantially the same language was stated elsewhere in the Form A and its Exhibit A-5. See *id.* at 10; Disclaimer of Control, Form A: Exhibit A-5, *supra* note 41, at 3.

Governance Agreements may cause the Transaction to fail a fundamental legal requirement under the Holding Company Acts. Therefore, in order for the Commissioner to make a determination that the Stock Governance Agreements rebut the presumption that the Foundation Shareholder has control, he must first determine that the restrictions are indeed effective under applicable law. If the restrictions fail the applicable legal requirements, then PREMERA cannot be deemed to have complied with the Disclaimer Authority, because the Commissioner cannot rely upon the Stock Governance Agreements in making a determination of whether the Foundation Shareholder does not, in fact, have control.

The Transaction's possible failure of the foregoing fundamental legal requirement compels the analysis of whether the Foundation Shareholder should, in fact, be deemed the acquiring person for purposes of the Holding Company Acts in the event that the Proposed Transaction is required to be changed (so as to give the Foundation Shareholder effective control of New PREMERA). Apparently, PREMERA intends that the enterprise will be ultimately controlled by New PREMERA, at least until the IPO (or other subsequent transaction) produces a different result. The OIC's concerns about the adequacy of the consideration intended to be conveyed to the Foundation Shareholder or Charitable Organizations may prompt changes in the Proposed Transaction's structure. Although these changes may essentially give the Foundation Shareholder control over the Shares to a degree where this fact cannot be rebutted, this will, at most, be a temporary phase. Thus, for purposes of the public policies underlying the Holding Company Acts and other applicable law, New PREMERA should be treated as the acquiring person, even if the purported disclaimer and the restrictions do not compel that result.

B. Economic Viability of the Transaction

C&B has been engaged to address the economic viability of the Proposed Transaction from a legal perspective. In general, for purposes of this analysis, economic viability can be viewed as adequacy of consideration. In the typical Form A proceeding, the OIC is not charged with ascertaining whether or not the parties struck a "good deal" or whether the sale price is reasonable. Those types of matters are generally left to the parties themselves. However, in the case of PREMERA's Proposed Transaction, the "seller" effectively is the public, which has not been provided a seat at the negotiating table or a voice in setting the sale price. Thus, economic viability in this instance is the very material determination of whether the public's interest in PREMERA is safeguarded in the Proposed Transaction. Put another way, the determination of economic viability inquires into whether the Foundation Shareholder and Charitable Organizations will receive consideration substantially equivalent to PREMERA's fair market value as discussed *infra* at section IV.C. The Commissioner's authority to determine the economic viability of the Proposed Transaction in this sense is derived primarily from the Holding Company Acts. Under the Holding Company Acts, the Commissioner may disapprove a transaction if:

[t]he plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material

change in its business or corporate structure or management, are unfair and unreasonable to subscribers of the health carrier and *not in the public interest*.⁵²

Although the IPO is not part of the Transaction *per se*, the IPO is an integral component of the Transaction, because it is the mechanism by which PREMERA has chosen to achieve the Transaction's ultimate purpose, which is to raise capital. Moreover, it is the IPO which first will deliver consideration to the Charitable Organizations. As the Proposed Transaction is structured, the Foundation Shareholder will receive stock, the proceeds of the sale of which by the Foundation Shareholder will be conveyed to the Charitable Organizations. Not before such sales occur can the Charitable Organizations receive any consideration. The first such sale will be the IPO. Subsequent sales of stock (mandatory or optional) will result in delivery of additional consideration by the Foundation Shareholder to the Charitable Organizations. The terms and timing of these sales, therefore, are essential determinants of whether the public (through the offices of the Charitable Organizations) will receive the equivalent of PREMERA's fair market value in consideration for the conversion. These are the issues that will therefore determine whether the Proposed Transaction is economically viable.

The Proposed Transaction's economic viability is probably best defined *initially* as whether, under the circumstances contemplated in the Proposed Transaction, a successful IPO is likely to occur for PREMERA, and whether the IPO can indeed succeed, given market conditions at the time of the IPO. Blackstone will need to give an opinion near the time of the potential IPO as to whether the IPO can be successful, given market conditions at that time. As of the date of this Final Report, Blackstone notes that there are currently several potential problems⁵³ with an IPO, including possible negative investor reaction to the potential loss of the I.R.C. § 833(b) deduction, and an overhang by the Foundation Shareholder depressing the price of the Shares due to the compelled divestiture.⁵⁴ Many of the foregoing problems relate to the transfer of fair market value to the Foundation Shareholder or the Transaction's potential negative effects on PREMERA and will be discussed in greater detail later in this Final Report.

[PROPRIETARY MATERIAL REDACTED]

] the Proposed Transaction does not identify explicitly a date upon which the IPO will occur. A date other than the Transaction's approval date could lead to substantial uncertainty as to the success of an IPO, creating additional doubt as to whether the IPO will transfer the fair market value of the charitable assets to the Foundation Shareholder. In addition, PREMERA has made no provision to include Blackstone, or another co-underwriting manager, in the IPO

⁵² RCW 48.31C.030(5)(a)(ii)(C)(II) (emphasis added); *see also* RCW 48.31B.015(4)(a)(iv) (providing almost exactly the same definition under the IHCA).

⁵³ Because the analysis of economic viability cannot occur until the date of the IPO nears, the Consultants cannot determine whether these problems will cause the Transaction to fail this requirement.

⁵⁴ Blackstone Valuation and Fairness Report, *supra* note 35, at 33 [CONFIDENTIAL].

process representing the Charitable Organizations' interest, so as to ensure that PREMIER's lead underwriter follows a process that will maximize the IPO's economic viability.

C. Washington Insurance Code, Washington Administrative Code, Washington Nonprofit Corporation Act, and Federal Law

C&B's Analysis is based on the information made available as of the October 15, 2003, amendment deadline. Unless specifically noted, this analysis assumes that the Form A is complete for purposes of evaluating the substantive statutory requirements. The possibility exists that information produced after completion of C&B's Analysis, or information that was not required to be produced by Judge Finkle on grounds of privilege, would have compelled different conclusions. In addition, subsequent information may entail a material change in the Proposed Transaction's structure, thereby limiting the usefulness of C&B's Analysis.

1. Washington Insurance Code

a. Holding Company Acts: Substantive Requirements

The substantive requirements applicable to PREMIER's change of control are furnished primarily by the Holding Company Acts. Under the Holding Company Acts, the Commissioner must approve the acquisition of control unless, after a public hearing, he finds either that: (1) after the change of control, the companies would not be able to satisfy the registration or licensing requirements to write the lines of insurance for which they are presently licensed; or (2) there is substantial evidence that the acquisition would substantially lessen competition or tend to create a monopoly (the "Antitrust Inquiry").⁵⁵ Additionally, under the HHCA's Antitrust Inquiry, the Commissioner may condition approval on the removal of the basis of disapproval as follows:

- (I) The financial condition of an acquiring party is such as might jeopardize the financial stability of the health carrier, or prejudice the interest of its subscribers;
- (II) The plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to subscribers of the health carrier and not in the public interest;
- (III) The competence, experience, and integrity of those persons who would control the operation of the health carrier are such that it would not be in the interest of subscribers of the health carrier and of the public to permit the merger or other

⁵⁵ RCW 48.31C.030(5)(a); *see also* RCW 48.31B.015(4)(a) (requiring under the IHCA only an "effect . . . to substantially lessen competition," and not the "substantial evidence" standard of the HHCA).

acquisition of control; or (IV) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.⁵⁶

In drafting the HHCA, the legislature listed these potential findings as part of RCW 48.31C.030(5)(a)(ii), apparently to be applied to the domestic health carrier's Antitrust Inquiry (to which they appear logically unrelated). However, under the IHCA, each of these effects has been appropriately designated as a stand-alone potential fact-finding to be applied with respect to the domestic insurer.⁵⁷

Therefore, both statutes may be construed to provide that if the Commissioner makes one or more of six distinct enumerated findings, he may disapprove the Transaction (or condition its approval upon removal of the basis of disapproval within a specified period of time). That is, the statutorily mandated potential fact-findings that the legislature apparently intended the Commissioner to make under the HHCA would be analogous to the IHCA's potential fact-findings as follows: (1) after the change of control, the domestic health carrier would not be able to satisfy a domestic health carrier's registration requirements; (2) there is substantial evidence that the acquisition would substantially lessen competition or tend to create a monopoly in insurance in Washington; (3) the acquiring party's financial condition is such as might jeopardize the health carrier's financial stability or prejudice its subscribers' interest; (4) the plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to the health carrier's subscribers, and not in the public interest; (5) the competence, experience, and integrity of those persons who would control the health carrier's operations are such that it would not be in the interest of the health carrier's subscribers, and of the public, to permit the acquisition of control; or (6) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.⁵⁸

The following two subsections of this Final Report discuss the Holding Company Acts' first two potential bases for disapproval, and the next four potential bases for disapproval are discussed *infra* at section III.D. Those four factors are analyzed separately because they involve the

⁵⁶ RCW 48.3C.030(5)(a)(ii)(C). These four conditions exist in the IHCA as well, with minor variations. See RCW 48.31B.015(4)(a)(iii)-(vi). Among the small changes under the IHCA, the term "policyholder" is substituted for "subscriber." *Id.*

⁵⁷ It appears that in 2001, when the HHCA was enacted, it was modeled after the pre-existing IHCA but, in the process, what would have become paragraphs (iii) through (vi) of RCW 48.31C.030(5)(a) mistakenly became paragraphs (I) through (IV) of RCW 48.31C.030(5)(a)(ii)(C). Compare RCW 48.31C.030(5)(a) with RCW 48.31B.015(4)(a). This apparent legislative error should not substantively affect the Commissioner's analysis of the Transaction.

⁵⁸ See RCW 48.31C.030(5)(a)(i), (5)(a)(ii), (5)(a)(ii)(C)(I)-(IV) (enumerating the six potential disqualifying findings with respect to a domestic health carrier under the HHCA); see also RCW 48.31B.015(4)(a)(i)-(vi) (enumerating the same with respect to a domestic insurer under the IHCA).

Transaction's fairness to policyholders, providers, and the public, which is a separate and distinct assignment under Stage One of the Engagement.

(1) Licensing and Registration Requirements

With regard to the first potential basis for disapproval, the Commissioner is required to disapprove the Transaction if he finds that New PBC or New LifeWise of Washington cannot meet the requirements to register as health care service contractors,⁵⁹ or SWL or LifeWise of Arizona would no longer be able to satisfy the licensing requirements to write the line or lines of insurance for which they are presently licensed.⁶⁰ In order to satisfy the requirements of registration as health care service contractors, New PBC and New LifeWise of Washington would have to file with the Commissioner, *inter alia*, a copy of all contracts and rates charged, pursuant to the rules and regulations prescribed by the Commissioner.⁶¹ Moreover, health care service contractors are required to meet minimum net worth standards.⁶² As noted below, there does not appear to be a material issue as to the applicant's current compliance with these requirements. Further, there is no reason to conclude that, merely as the result of the proposed holding company reorganization, New PBC or New LifeWise of Washington would no longer meet the requirements to register as health care service contractors, or SWL or LifeWise of Arizona would no longer be able to satisfy the licensing requirements to write the line or lines of insurance for which they are presently licensed. In fact, prior to this Final Report, the OIC had already analyzed this issue and concluded that it is proper to allow the licenses and registrations to transfer.⁶³

Although SWL and LifeWise of Arizona are not converting, they must continue to satisfy the requirements for a certificate of authority. In order to qualify for a certificate of authority, an

⁵⁹ See RCW 48.31C.030(5)(a)(i).

⁶⁰ See RCW 48.31B.015(4)(a)(1).

⁶¹ See RCW 48.44.040 ("No [health care service contractor] shall change any rates, modify any contract, or offer any new contract, until he has filed a copy of the changed rate schedule, modified contract, or new contract with the [C]ommissioner."); see also RCW 48.44.050 (giving the Commissioner the authority to "make reasonable regulations").

⁶² See RCW 48.44.037.

⁶³ See E-mail from John Hamje, Staff Attorney, OIC, to Andrew V. Taktajian, Associate, C&B (March 20, 2003, 4:22 p.m. CST) (on file with C&B) [hereinafter "E-mail from John Hamje"] (providing an attachment from Jim Odiorne of the OIC, which states that the OIC believes that health care service contractor licenses may be transferred without going through the full licensing procedure) [CONFIDENTIAL]. Typically, a registration statement containing the information on the Form B and Form C of the WAC are also required to be filed. For the HHCA's requirements, see RCW 48.31C.040(2)-(4) (listing information to be filed with the Commissioner); WAC 284-18A-370, 18A-920 (providing the Form B filing requirements and the Form B); WAC 284-18A-380, 18A-930 (providing the Form C filing requirements and the Form C). For the IHCA's requirements, see RCW 48.31B.025(2)-(4) (listing information to be filed with the Commissioner); WAC 284-18-920 (providing Form B); WAC 284-18-930 (providing the Form C).

insurer must maintain certain capital requirements.⁶⁴ The Transaction should not affect their certificates of authority, because the Transaction is not expected to impair PREMERA's capital, but rather, may increase the capital on hand.

In addition, the Commissioner may refuse to accept the registration of a health care service contractor, or revoke an insurer's certificate of authority, if he finds that the company's financial condition jeopardizes the payment of claims and refunds to subscribers or is hazardous to policyholders.⁶⁵ The foregoing determinations are substantially similar to, and addressed more appropriately under, the sixth criterion of the Holding Company Acts, which is discussed *infra* at section III.D.4.

(2) Antitrust Inquiry

With regard to the second potential basis for disapproval, the Commissioner reviews the Transaction's effects on competition only if the antitrust section of the Attorney General's office, or any federal antitrust enforcement agency, chooses not to review the Transaction. However, if the Attorney General's antitrust section does not undertake a review of the Transaction, then the Commissioner should seek input from the Attorney General throughout the review.⁶⁶ In this case, the Attorney General's office has decided not to undertake a review of the Transaction, but rather, to provide input to the Commissioner.

The Holding Company Acts prevent the Commissioner from disapproving the Transaction on this basis if he finds, with the Attorney General's input, that: (a) the acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from more competition;⁶⁷ or (b) the acquisition will substantially increase or prevent significant deterioration in health care coverage or insurance availability, and the public benefits of the increase exceed the public benefits that would arise from more competition.⁶⁸ The IHCA (but not the HHCA) in citing RCW 48.31B.020, implicitly seems to adopt the exemptions of that section with respect to the analysis of the competitive effects of an acquisition. RCW 48.31B.020 exempts

⁶⁴ RCW 48.05.040(2).

⁶⁵ RCW 48.44.160(2); RCW 48.05.140(2).

⁶⁶ RCW 48.31C.030(5)(a)(ii).

⁶⁷ RCW 48.31C.030(5)(a)(ii)(B)(I); RCW 48.31B.015(4)(a)(ii)(B), 48.31B.020(4)(c)(i).

⁶⁸ RCW 48.31C.030(5)(a)(ii)(B)(II); *see also* RCW 48.31B.015(4)(a)(ii)(B), 48.31B.020(4)(c)(ii) (containing substantially similar language as the HHCA, but omitting the "prevent significant deterioration" clause).

from that section, *inter alia*, an acquisition of already affiliated persons or an acquisition if, as an immediate result thereof, there would be no increase in any market share.⁶⁹

In reviewing PREMIERA's Proposed Transaction with respect to the Antitrust Inquiry, the Attorney General will provide input as to the Proposed Transaction's effect on competition. Arguably, the Transaction does not raise any antitrust concerns under the IHCA because the Transaction is between already affiliated persons, and apparently, there will be no *immediate* increase in any market share as a result of the Transaction. Exemptions from the Antitrust Inquiry under these circumstances exist under provisions regarding insurance acquisitions in RCW 48.31B.020(2)(b)(iv) and (v)(B), though, notably, the HHCA lacks similar exemptions. Although the Attorney General and the Commissioner may apply these exemptions to the HHCA by analogy, they do not appear to be required to do so. Nonetheless, the Attorney General and the Commissioner may reasonably conclude that, although the Transaction is between affiliates and is not expected to result in an *immediate* increase in market share, a possibility still exists that the fundamental changes resulting from the Transaction will both induce and enable New PREMIERA to engage in anticompetitive practices, thereby resulting in substantial increases in market share in the future.

The possibility of anticompetitive practices contemplates the potential consequences of the planned IPO of New PREMIERA's securities after the Transaction. Even though the IPO is not described as part of the Transaction *per se*, it is evident that the Proposed Transaction is a necessary precursor to an IPO, to be conducted at some point after the corporate reorganization and conversion. Indeed, from PREMIERA's perspective, the IPO is the essential conclusion of the Transaction and the resulting substantial increase in available capital is foreseen as one of the Transaction's key goals and most significant consequences. The additional capital might be deployed to facilitate same-market acquisitions, or to fund price wars, lessening competition in either case. Because these possibilities are somewhat speculative, the analysis must encompass not just economic considerations, but also an examination of the sufficiency as a matter of law of the perceived causal link. C&B believes that the causal link between the two events is too speculative to result in a finding that the Transaction fails the Antitrust Inquiry.

A question somewhat related to the anticompetitive effect is whether New PREMIERA's status as a for-profit company will likely result in a disparity in bargaining power between health care providers and New PREMIERA because of New PREMIERA's access to additional capital and resulting potential for rapid growth. Another issue related to the Antitrust Inquiry is whether PREMIERA's market power will allow it to raise premium rates or to reduce provider compensation in response to shareholder pressures. But, these possibilities are more likely to involve the extent to which the plans for New PREMIERA are contrary to the interests of policyholders or the public, as discussed *infra* at section III.D.2. Nonetheless, the Attorney General's office may undertake an analysis that also encompasses some of the foregoing issues as part of the input that it will provide to the Commissioner.

⁶⁹ RCW 48.31B.020(2)(b)(iv), (2)(b)(v)(B).

b. Notice of Material Transactions

The Commissioner must receive prior notice of certain transactions between affiliates within either an insurance holding company system or a health carrier holding company system. For these transactions, prior notice to the Commissioner, through a Form D filing, is required.⁷⁰ New PREMIER's Form D is an exhibit to its Form A.⁷¹ Such transactions include, *inter alia*, the following: (1) management agreements, service contracts, and cost-sharing arrangements;⁷² (2) other acquisitions or dispositions of assets involving more than [five] percent of the health carrier's admitted assets, specified by rule, that the Commissioner determines may adversely affect the interests of the health carrier's subscribers;⁷³ or (3) material transactions, specified by rule, that the Commissioner determines may adversely affect the interests of the insurer's policyholders.⁷⁴

Moreover, these transactions are subject to the following standards: (1) the terms must be fair and reasonable; (2) charges or fees for services performed must be fair and reasonable; (3) expenses incurred and payment received must be allocated to the health carrier or insurer in conformity with customary statutory accounting practices consistently applied; (4) each party's books, accounts, and records must be so maintained as to clearly and accurately disclose the transaction's nature and details, including accounting information necessary to support the reasonableness of charges and fees to the respective parties;⁷⁵ and (5)(a) the health carrier's net worth after the transaction must exceed the health carrier's company action-level risk-based capital;⁷⁶ or (5)(b) the insurer's surplus regarding policyholders, after dividends or distributions to shareholders or affiliates, must be reasonable in relation to the insurer's outstanding liabilities and

⁷⁰ RCW 48.31C.050(2); WAC 284-18A-420, 18A-940. For the IHCA's provisions, see RCW 48.31B.030(1)(b); WAC 284-18-220, 18-940.

⁷¹ Form D, Form A: Exhibit G-9 (Sept. 17, 2002), *available at* http://www.insurance.wa.gov/special/premera/filing/ExhibitG-9_Form_D.pdf [hereinafter "Form D, Form A: Exhibit G-9"].

⁷² RCW 48.31C.050(2)(d); RCW 48.31B.030(1)(b)(iv).

⁷³ RCW 48.31C.050(2)(e). A similar provision is not found in the IHCA.

⁷⁴ RCW 48.31B.030(1)(b)(v). A similar provision is not found in the HHCA.

⁷⁵ RCW 48.31C.050(1)(a)–(d) (listing these four HHCA provisions); RCW 48.31B.030(1)(a)(i)–(iv) (listing these four IHCA provisions).

⁷⁶ RCW 48.31C.050(1)(e).

adequate to its financial needs.⁷⁷ These last two factors ((5)(a) and (5)(b)) are inapplicable, because PREMIERA's surplus is expected to increase as a result of the Transaction.⁷⁸

New PREMIERA's Form D meets all the informational requirements under the WAC. The agreements in the Proposed Transaction that are required to be disclosed in the Form D are the Management Agreement, Intercompany Services and Cost Allocation Agreement (the "Cost Agreement"), and the Intercompany Tax Sharing Agreement (the "Tax Agreement").

Pursuant to the Management Agreement, New PBC will provide management and administrative services to PBC-AK "in order for PBC-AK to carry out its business and operations in [a] manner substantially consistent with the manner in which PBC carried out its business and operation . . . prior to" the Transaction.⁷⁹ These management services include, but are not limited to, the following: actuarial services, underwriting, sales, operational support, financial management, legal services, human resources, care facilitation, and information technology.⁸⁰ PBC-AK is required to reimburse New PBC according to the Cost Agreement's terms.⁸¹ Furthermore, PBC-AK will indemnify New PBC for liability, except for gross negligence or willful misconduct, arising from the management services, and New PBC will not be liable for any consequential or punitive damages.⁸² In addition, PBC-AK will indemnify New PBC for legal and other fees, whether or not they arise out of pending or threatened litigation in connection with the management services.⁸³

The Cost Agreement provides for the payment for services on a cost basis between New PREMIERA and its related affiliates. In addition, the Cost Agreement describes cost allocation methods and procedures for the allocation of general and administrative ("G&A") expenses.⁸⁴ According to the Cost Agreement, the G&A expenses will be allocated using New PREMIERA's or New PBC's activity-based cost accounting system. Furthermore, the Cost Agreement notes that this

⁷⁷ RCW 48.31B.030(1)(a)(v).

⁷⁸ RCW 48.31C.050(1)(e) (stating, for the HHCA, that this provision "does not prohibit transactions that improve or help maintain the health carrier's net worth"). Although RCW 48.31B.030(1)(a)(v) does not have a similar exclusion, as a practical matter, this section would be inapplicable.

⁷⁹ Management Agreement, Form A: Exhibit H-2, § 1, at 1 (Oct. 4, 2002), *available at* http://www.insurance.wa.gov/special/premera/filing/Exhibit_H-2.pdf [hereinafter "Management Agreement, Form A: Exhibit H-2"].

⁸⁰ Form D, Form A: Exhibit G-9, *supra* note 71, at 6.

⁸¹ Management Agreement, Form A: Exhibit H-2, *supra* note 79, § 2, at 2.

⁸² *Id.* at § 5, at 2-3.

⁸³ *Id.*

⁸⁴ Cost Agreement, Form A: Exhibit G-9-4, Recitals, at 1 (Sept. 26, 2002), *available at* http://www.insurance.wa.gov/special/premera/filing/Exhibit4_of_ExhibitG-9.pdf.

system will accumulate G&A expenses according to Generally Accepted Accounting Principles ("GAAP"), consistently applied, and will allocate the expenses to the lines of business based upon an appropriate quantifiable measure that supports the activities performed in the cost center.⁸⁵ These activities include, but are not limited to, the following: the level of service, claims processed, membership, CPU utilized, time reporting and/or activity.⁸⁶ Moreover, either New PREMERA or New PBC is required to allocate the G&A expenses at the account level within each cost center according to guidelines that are consistent with BCBS cost accounting guidelines and Federal Cost Accounting Standards ("CAS").⁸⁷ These methods are to be reviewed periodically and may be amended, if necessary, for: "(a) changes in business practices; (b) changes in BCBS cost accounting guidelines and/or CAS; or (c) determinations that an inappropriate method has been used in the past, which did not fairly distribute the costs among two or more of the [p]arties."⁸⁸

The Tax Agreement provides that New PREMERA and its affiliates will file a consolidated return, and New PREMERA will pay all taxes.⁸⁹ Each affiliate will pay its share of the consolidated tax liability as follows: (1) if regular tax is payable, then each will pay the regular tax that would be payable if filed separately, less any consolidated tax attributes (net operating losses or tax credits) to reduce the separate tax liability, or (2) if alternative minimum tax ("AMT") is paid on the consolidated tax return, then each affiliate will pay its share of taxes that would have been paid if AMT had been filed separately, less any consolidated tax attributes to reduce the separate tax liability.⁹⁰ Although net operating losses ("NOL") or tax credits generated by one affiliate may be used to reduce the tax liability of other members in certain years, those members benefitting from such tax reduction should reimburse the affiliate for any tax benefit generated.⁹¹ The parties will not reimburse one another for the use of components of taxable income other than the NOLs or tax credits, and components such as capital loss carryforwards and excess charitable contributions will not be accounted for on a separate return basis.⁹²

⁸⁵ *Id.* at § 2.1(a), at 1.

⁸⁶ *Id.*

⁸⁷ *Id.* at § 2.1(b), at 2.

⁸⁸ *Id.* at § 2.2, at 2.

⁸⁹ Tax Agreement, Form A: Exhibit G-9-5, § 2.1, at 2 (Sept. 26, 2002), available at http://www.insurance.wa.gov/special/premera/filing/Exhibit5_of_ExhibitG-9.pdf.

⁹⁰ *Id.* at § 2.2, at 2.

⁹¹ *Id.* at §§ 3.1–3.2, at 3.

⁹² *Id.* at § 3.3, at 4.

The determination by the Commissioner of whether PREMERA's Form D complies with applicable law, will turn, in part, on determinations within the scope of PwC's engagement, such as the financial reasonableness of the Cost Agreement, Tax Agreement, and Management Agreement, including whether the proposed charges for services to be performed, are fair and reasonable. PwC has indicated that the expenses incurred and payments received as part of the Management Agreement and Cost Agreement will be allocated according to customary statutory accounting practices consistently applied.⁹³ Moreover, PwC's analysis does not reveal that these two agreements are financially unfair or unreasonable.⁹⁴ From a legal perspective, the terms of these two agreements also do not appear to make them inherently unfair or unreasonable. The other statutory requirements are inapplicable to the Transaction. The Tax Agreement, however, does not comply with the foregoing legal standards. PwC's analysis shows that Section 3.3 could result in situations in which members are not reimbursed for certain tax attributes generated on a separate return basis.⁹⁵

c. Transfer of Insurance Contracts

Another issue to be considered is whether the transfer of insurance contracts from PBC to New PBC and from LifeWise of Washington to New LifeWise of Washington is appropriate under applicable law. PREMERA requests that the Commissioner confirm that the transfer of all insurance contracts (as defined in WAC 284-95-030(6)) will not be deemed to trigger the requirements of WAC Chapter 284-95 (which includes health care service contractors).⁹⁶ When applicable, these regulations impose certain policy owner notification and consent requirements and proscribe discrimination and certain other practices.

The regulation governing the transfer of insurance contracts does not apply in specified circumstances, including mergers, when a transferring company withdraws from the state pursuant to RCW 48.05.290, or absorptions by parent companies.⁹⁷ The Proposed Transaction should be deemed to be encompassed within one or more of these exemptions. For example, RCW 48.05.290 states, in pertinent part, that "[n]o insurer shall withdraw from this state until its direct liability to its policyholders and obligees under all its insurance contracts then in force in this state has been assumed by another authorized insurer under an agreement approved by the [C]ommissioner."⁹⁸

⁹³ PwW Accounting Report, *supra* 30, at 25 [CONFIDENTIAL].

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Form A, *supra* note 44, at 5.

⁹⁷ WAC 284-95-020(3).

⁹⁸ RCW 48.05.290(1).

The Proposed Transaction can be deemed to satisfy the requirements of RCW 48.05.290 because LifeWise of Washington will transfer its insurance contracts to another authorized insurer, New LifeWise of Washington, and LifeWise of Washington will withdraw from the state pursuant to its Articles of Dissolution. Thus, the Commissioner may approve the agreement that requires New LifeWise of Washington to assume LifeWise of Washington's insurance contracts. Similarly, PBC will transfer its insurance contracts to another authorized insurer, New PBC, and PBC will withdraw from the state pursuant to its Articles of Dissolution. Again, the Commissioner may approve the agreement that requires New PBC to assume PBC's insurance contracts.

It is critically important that the transfer not result in any adverse change in the terms or cost of coverage. Because the Form A currently provides no such assurance,⁹⁹ the possibility exists that such changes will occur due to the change in PREMERA's corporate structure from a nonprofit company to a for-profit company as discussed *infra* at section III.D.2. Thus, the Commissioner should not approve the transfer of policies contemplated in the Proposed Transaction in the absence of express adequate assurances that the transfer will not result in adverse changes in the terms or cost of coverage. [

PROPRIETARY MATERIAL REDACTED

] C&B's recommendation, thus, should be interpreted to mean that the transfer of insurance contracts should be denied to the extent that the Commissioner concludes that subscribers and policyholders will be affected adversely, for example, because of New PREMERA's potential rate increases to satisfy shareholder pressures as indicated in the analysis of PwC as described *infra* at section III.D.2. Such rate increases would effectively cause a change in the terms or coverage of the subscribers' policies in the future. If adequate assurances are, however, provided, and if all the other substantive requirements for the Transaction's approval are satisfied, then the Commissioner's approval of the assumption of insurance contracts is merely a formality.

d. Solicitation Permits

The Washington Insurance Code also imposes upon the Transaction certain requirements related to the solicitation of capital. It provides that:

⁹⁹ Although PREMERA's Plan of Conversion does state that there *will not* be any change in the transferred policies, there is no express assurance that no changes will occur. Plan of Conversion of PREMERA, PBC, and LifeWise of Washington, Form A: Exhibit A-4, art. II, at 5 (September 26, 2002), *available at* <http://www.insurance.wa.gov/special/premera/filing/ExhibitA-4.pdf> [hereinafter "Plan of Conversion, Form A: Exhibit A-4"]].

¹⁰⁰ See letter from PREMERA to James T. Odiome, at p. 31 (Oct. 17, 2003) (providing [

PROPRIETARY MATERIAL REDACTED] (on file with C&B) [hereinafter "PREMERA's Initial Comments"] [CONFIDENTIAL]. Although these comments were delivered after the October 15, 2003, deadline, C&B has attempted to address at least some of PREMERA's comments.

No person forming or proposing to form in this state an insurer, or insurance holding corporation, or stock corporation to finance an insurer or insurance production therefor, or corporation to manage an insurer, or corporation to be attorney in fact for a reciprocal insurer, or a syndicate for any of such purposes, shall advertise, or solicit or receive any funds, agreement, stock subscription, or membership on account thereof unless he has applied for and has received from the [C]ommissioner a solicitation permit.¹⁰¹

The required application for a solicitation permit must include, *inter alia*, a plan according to which solicitations are to be made.¹⁰²

The Form A acknowledges that New PREMIERA, New PBC, and New LifeWise of Washington will all need solicitation permits. Applications have been submitted for the issuance of stock by New PREMIERA to the Foundation Shareholder, issuance of New PBC's stock, and issuance of New LifeWise of Washington's stock.¹⁰³ For the solicitation permit required for the IPO, indications are that PREMIERA has not yet developed the plan according to which solicitations are to be made.¹⁰⁴ Thus, it may be premature to require such a plan.¹⁰⁵ Likewise, it is premature to require a solicitation permit for the sale of New PREMIERA stock to existing shareholders under the Stockholder Protection Rights Agreement or secondary offerings.¹⁰⁶ Therefore, at the time these events occur, New PREMIERA will be required to provide such plans in order for the Commissioner to make this determination. The OIC concurs with this position.¹⁰⁷ Since the solicitation permit documents will be submitted at a later stage of the conversion (presumably after the S-1 registration statement required by federal securities laws has been completed), C&B cannot now express any views as to the Proposed Transaction's compliance with these provisions. Suffice it therefore to note at this juncture that the application for such solicitation permit, and the underlying plans, should be evaluated by the OIC before commencement of the solicitation for capital.

¹⁰¹ RCW 48.06.030(1).

¹⁰² RCW 48.06.040(1)(d).

¹⁰³ See letter from PREMIERA to James T. Odiome (Oct. 25, 2002) (providing a response to Mr. Odiome's deficiency letter) (on file with C&B).

¹⁰⁴ See *id.*

¹⁰⁵ See *id.*

¹⁰⁶ See *id.*

¹⁰⁷ See E-mail from John Hamje, *supra* note 63 (providing an attachment from James T. Odiome indicating that the outstanding solicitation permits for the IPO and subsequent financing will be required to be submitted at the time of the IPO or subsequent financing) [CONFIDENTIAL].

2. Washington Nonprofit Corporation Act

In addition to the requirements of the Holding Company Acts regarding: (1) licensing and registration; and (2) the Antitrust Inquiry, the Commissioner may disapprove the Transaction if he makes one of the following fact-findings: (3) the acquiring party's financial condition is such as might jeopardize the health carrier's financial stability or prejudice its subscribers' interest; (4) the plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to the health carrier's subscribers, and not in the public interest; (5) the competence, experience, and integrity of those persons who would control the health carrier's operations are such that it would not be in the interest of the health carrier's subscribers, and the public, to permit the acquisition of control; or (6) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.¹⁰⁸

Generally, compliance with the Washington Nonprofit Corporation Act is a matter within the Attorney General's authority as *parens patriae*.¹⁰⁹ However, the proposed organizational documents, and the due diligence conducted by PREMERA, are integral parts of PREMERA's plans and proposals to: (a) liquidate the acquired domestic insurers and domestic health carriers; (b) sell their assets; and (c) make other material changes to their business or corporate structure.¹¹⁰ Therefore, the Commissioner has the authority to determine whether PREMERA has complied with the Washington Nonprofit Corporation Act in order to make a determination as to whether the Proposed Transaction is not in the public interest.¹¹¹ In particular, the Commissioner should consider the due diligence conducted by PREMERA's officers and directors, and the appropriateness of the Articles of Incorporation and Bylaws of both, the Foundation Shareholder and the Washington Charitable Organization.

a. Due Diligence

The applicable due diligence requirements compel a nonprofit corporation's directors and officers with discretionary authority to perform their duties: "(a) [i]n good faith; (b) [w]ith the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (c) [i]n a manner the director or officer reasonably believes to be in the best interests of the

¹⁰⁸ See *supra* note 58 and accompanying text.

¹⁰⁹ RCW 24.03.230 (indicating that the Attorney General must approve a plan of distribution with respect to the assets containing limitations in RCW 24.03.225(3)).

¹¹⁰ See RCW 48.31C.030(5)(a)(ii)(C)(II), see also 48.31B.015(4)(a)(iv) (providing grounds for the Commissioner to disprove "a merger or other acquisition of control").

¹¹¹ *Id.*

corporation.”¹¹² Analysis of whether the Proposed Transaction complies with the due diligence requirements requires reference to PREMERA’s “Business Case,” which is discussed in-depth *infra* at section III.D.2.e. Therefore, evaluation in this report of whether PREMERA has satisfied its due diligence obligations is contained in that section.

b. Articles of Incorporation and Bylaws of the Washington Charitable Organization and the Foundation Shareholder

The Foundation Shareholder’s Articles of Incorporation and Bylaws are similar to those of the Washington Charitable Organization. Therefore, references to specific provisions of the Foundation Shareholder’s Articles of Incorporation or Bylaws, or the terms “Articles of Incorporation” or “Bylaws,” apply to both entities unless otherwise noted.

(1) Indemnification, Conflicts with Bylaws, and Presumption of Assent

The Articles of Incorporation and Bylaws provide protections which exceed those envisioned in the applicable statutory requirements for indemnifying directors and officers. Moreover, the Articles of Incorporation conflict with the Bylaws. Also, the provision regarding the presumption of assent, when calculating director votes, do not comply with the relevant statute. These matters are of particular concern because the Foundation Shareholder’s directors will be PREMERA nominees with some historical link to PREMERA and, effectively therefore, PREMERA representatives.

Under RCW 24.03.043, the indemnification provisions of RCW Chapter 23 (the “Washington Business Corporation Act”) apply to a nonprofit corporation, because RCW 24.03.043 references RCW 23B.17.030 of the Washington Business Corporation Act. RCW 23B.17.030 states that a corporation’s indemnification provisions must comply with both RCW 23B.08.320 and RCW 23B.08.500 through 23B.08.600. Thus, the indemnification provisions of a corporation are valid only if they are consistent with RCW 23B.08.500 through 23B.08.580.¹¹³ Generally, the Articles of Incorporation and Bylaws provide protections which exceed those contemplated in these statutes. PREMERA responds to this concern by pointing to RCW 23B.08.560 as statutory authority which allows it to adopt indemnification provisions for the Foundation Shareholder that are broader than the limitations imposed by the Business Corporation Act. RCW 23B.08.560, “Shareholder Authorized Indemnification and Advancement of Expenses,” states the following:

¹¹² RCW 24.06.153(1).

¹¹³ RCW 23B.08.590.

(1) If authorized by the articles of incorporation, a bylaw adopted or ratified by the shareholders, or a resolution adopted or ratified, before or after the event, by the shareholders, a corporation shall have power to indemnify or agree to indemnify a director made a party to a proceeding, or obligate itself to advance or reimburse expenses incurred in a proceeding, without regard to the limitations in RCW 23B.08.510 through 23B.08.550, provided that no such indemnity shall indemnify any director from or on account of:

(a) Acts or omissions of the director finally adjudged to be intentional misconduct or a knowing violation of law;

(b) Conduct of the director finally adjudged to be in violation of RCW 23B.08.310; or

(c) Any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property, or services to which the director was not legally entitled.

(2) Unless the articles of incorporation, or a bylaw or resolution adopted or ratified by the shareholders, provide otherwise, any determination as to any.¹¹⁴

Although RCW 23B.08.560 does indeed, arguably permit broader indemnification, it does so upon election by the company's shareholders. The expanded indemnification incorporated in the Proposed Transaction is not the product of a decision by the shareholders of the Foundation Shareholder or the Washington Charitable Organizations, for none exist at this time. Indeed, the putative owners of the Foundation Shareholder, the citizens of the state of Washington, have had no say whatsoever in the proposal that the PREMERA nominated directors of the Foundation Shareholder be afforded this expanded insulation against the consequences of their actions. For this reason, C&B questions whether the public policy underlying RCW 23B.08.560 is actually served by its application under these circumstances. Moreover, even if authorized by this section, does such broader indemnification serve the public interest? Although it is widely recognized that some indemnification provisions are necessary in order to attract qualified directors, officers, and management, the desired breadth of those indemnification obligations is obviously debatable. Indemnification provisions that do not provide for sufficient protection for directors, officers, and management may prevent qualified applicants from being employed by the Foundation Shareholder. On the other hand, indemnification provisions that are too lenient may unfairly place the burden of certain wrongful actions on the company, which impacts the value of the owners' financial interest in the company. RCW 23B.08.560 contemplates that shareholders will make these determinations. The "owners" of the Foundation Shareholder are the public and not PREMERA's directors. As the representative of the public, the Commissioner should consider whether he should approve

¹¹⁴ RCW 23B.08.560 (emphasis added).

indemnification provisions that are broader than the limitations which the Washington legislature enacted as default provisions beyond which shareholder action is necessary.

Regardless of the applicability of RCW 23B.08.560, it is not in the public's interest to develop indemnification provisions that are: (1) broader than the limitations in RCW 23B.08.560 as described above; (2) broader than the provisions that have been adopted by New PREMERA which mirror the legislature's limitations, but are not incorporated in the bylaws of the Foundation Shareholder or the Washington Charitable Organization; or (3) more onerous than those adopted for New PREMERA.

Without limiting the applicability of the foregoing statutes, the following discussion identifies those provisions of the Articles of Incorporation and Bylaws that do not comply with the applicable statutory requirements. First, the indemnification provisions are contrary to RCW 23B.08.510(1) and RCW 23B.08.510(4)(a) because the limitations in those statutes have not been included in the Articles of Incorporation or Bylaws, which results in indemnification that is far too broad.¹¹⁵ RCW 23B.08.510(1) includes the requirements that the indemnitee (a) acted in good faith; and (b) the individual reasonably believed: (i) the conduct was in the company's best interests if acting in the individual's official capacity; and (ii) in all other cases, the conduct was not at least opposed to the company's best interests; and (c) in criminal proceedings, the individual could not reasonably believe that the conduct was unlawful. RCW 23B.08.510(4)(a) prevents indemnification if the director¹¹⁶ was adjudged liable to the corporation in a proceeding by, or in right of, the corporation. Second, the Articles of Incorporation and Bylaws do not include the definition of "Official Capacity" as set forth in RCW 23B.08.500(5).¹¹⁷

(5) "Official capacity" means: (a) When used with respect to a director, the office of director in a corporation; and (b) when used with respect to an individual other

¹¹⁵ See Foundation Shareholder, Articles of Incorporation, Form A: Exhibit E-1, art. VIII, § 1, at 4-5 (Sept. 16, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitE-1.pdf> [hereinafter "Foundation Shareholder, Articles of Incorporation, Form A: Exhibit E-1"] ("Authority to Indemnify"); Foundation Shareholder, Bylaws, Form A: Exhibit E-2, § 7.2, at 12 (Sept. 17, 2002), Exhibit-1 available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitE-2.pdf> [hereinafter "Foundation Shareholder, Bylaws, Form A: Exhibit E-2"] ("Indemnification Rights of Directors, Officers, Employees and Agents"). See also Washington Charitable Organization, Articles of Incorporation, Form A: Exhibit E-3, art. VIII, § 1, at 5 (Sept. 17, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitE-3.pdf> [hereinafter "Washington Charitable Organization, Articles of Incorporation, Form A: Exhibit E-3"] ("Authority to Indemnify"); Washington Charitable Organization, Bylaws, Form A: Exhibit E-4, § 7.2, at 10 (Sept. 17, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitE-4.pdf> [hereinafter "Washington Charitable Organization, Bylaws, Form A: Exhibit E-4"] ("Indemnification Rights of Directors, Officers, Employees and Agents").

¹¹⁶ The corporation may indemnify and advance expenses under RCW 23B.08.510 through 23B.08.560 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director. RCW 23B.08.570.

¹¹⁷ See Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, § 7.1, at 10-12 ("Definitions"); Washington Charitable Organization, Bylaws, Form A: Exhibit E-4, *supra* note 115, § 7.1, at 9-10 ("Definitions").

than a director, as contemplated in RCW 23B.08.570, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.¹¹⁸

Third, the Articles of Incorporation and Bylaws do not limit reimbursement for expenses regarding indemnification to reasonable expenses as specified in RCW 23B.08.530 and 23B.08.550(3).¹¹⁹ Fourth, the presumption in the Bylaws that an Indemnitee is entitled to indemnification, and the requirement that the Board of Directors determine by clear and convincing evidence that the Indemnitee is *not* entitled to indemnification, does not comply with RCW 23B.08.550, which does not provide for such presumption or standards.¹²⁰ Fifth, in determining the procedure regarding advances for expenses, the Bylaws do not comply with RCW 23B.08.530, because they do not require the director to provide a "written affirmation" of his belief that the standard of conduct required to be eligible for indemnification has been met.¹²¹ Similarly, the Bylaws do not comply with RCW 23B.08.530, which requires a "written undertaking, executed personally or on the Indemnitee's behalf."¹²² Moreover, New PREMERA requires such "written" affirmations and undertakings, but does not require the same for the Foundation Shareholder's indemnification obligations.¹²³ Sixth, the right of an Indemnitee to bring suit in Section 7.4.4 of the Bylaws does not comply with RCW 23B.08.500(4), 23B.08.540, and

¹¹⁸ RCW 23B.08.500(5).

¹¹⁹ See Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, § 7.2, at 12 ("Indemnification Rights of Directors, Officers, Employees and Agents"); *id.* at § 7.3.1, at 12-13 ("Notification and Defense of Claims"); see also Washington Charitable Organization, Bylaws, Form A: Exhibit E-4, *supra* note 115, § 7.2, at 10 ("Indemnification Rights of Directors, Officers, Employees and Agents"); *id.* at § 7.3.1, at 10-11 ("Notification and Defense of Claims").

¹²⁰ See Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, § 7.3.2, at 13 ("Information to be Submitted and Method of Determination and Authorization of Indemnification"); Washington Charitable Organization, Bylaws, Exhibit A: Exhibit E-4, *supra* note 115, § 7.3.2, at 11 ("Information to be Submitted and Method of Determination and Authorization of Indemnification").

¹²¹ See Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, § 7.3.3(a), at 13; Washington Charitable Organization, Bylaws, Form A: Exhibit E-4, *supra* note 115, § 7.3.3(a), at 12 (both requiring – within the "Special Procedure Regarding Advance for Expenses" provision – only "an affirmation, given in any manner and by any means permitted under the Act," without specifying a "written affirmation").

¹²² See Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, § 7.3.3(b), at 13; Washington Charitable Organization, Bylaws, Form A: Exhibit E-4, *supra* note 115, § 7.3.3(b), at 12 (both requiring – within the "Special Procedure Regarding Advance for Expenses" provision – only "an undertaking, given in any manner and by any means permitted under the Act," without specifying a "written affirmation").

¹²³ See, e.g., See New PREMERA, Bylaws, Form A: Exhibit B-2, art. V, § 5(c)(2), at 14 (Sept. 17, 2002), available at http://www.insurance.wa.gov/special/premera_filing/ExhibitB2.pdf (requiring "a written undertaking").

23B.08.550.¹²⁴ Section 7.4.4 of the Bylaws, *inter alia*, prevents a court from giving significant weight to the Foundation Shareholder's determination that indemnification should not be granted by preventing the use of that determination as a presumption against the Indemnitee.¹²⁵ Seventh, in the Bylaws, the term "Indemnitee" is defined more broadly than officers and directors, and thus, seems to be inconsistent with the provision in the Bylaws that provides liability insurance only for acts done by officers and directors.¹²⁶

In addition to the problems with the indemnification provisions, the Washington Charitable Organization's Articles of Incorporation appear to conflict with its Bylaws. Article X of the Washington Charitable Organization's Articles of Incorporation requires a vote of two-thirds (2/3) for the amendment of any Bylaw. However, Section 9.6 of the Washington Charitable Organization's Bylaws requires a unanimous vote to amend Article II, Article III, or Section 9.6 of the Bylaws. Thus, the Washington Charitable Organization's Articles of Incorporation require a lesser vote than the Bylaws in order to amend the Bylaws.¹²⁷

Also, the Bylaws' first exception to the presumption of assent, with respect to calculating a director's vote, is too specific and does not comply with RCW 24.03.120.¹²⁸ This section states that a director at a board meeting is presumed to have assented to the action taken unless: "(a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting." PREMERA notes that this language is consistent with the requirements of RCW 24.03.120. However, RCW 24.03.120 states, in pertinent part, the following:

Attendance of a director or a committee member at a meeting shall constitute a waiver of notice of such meeting, except where a director or a committee member

¹²⁴ See Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, § 7.4.4, at 14-15 ("Right of Indemnitee to Bring Suit"); Washington Charitable Organization, Bylaws, Form A: Exhibit E-4, *supra* note 115, § 7.4.4, at 13 ("Right of Indemnitee to Bring Suit").

¹²⁵ See Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, § 7.4.4, at 14-15 ("Right of Indemnitee to Bring Suit"); Washington Charitable Organization, Bylaws, Form A: Exhibit E-4, *supra* note 115, § 7.4.4, at 13 ("Right of Indemnitee to Bring Suit").

¹²⁶ See Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, § 7.5.3, at 15 ("Insured Claims"); *id.* at § 7.1(g), at 11 (defining "Indemnitee"). See also Washington Charitable Organization, Bylaws, Form A: Exhibit E-4, *supra* note 115, § 7.5.3, at 14 ("Insured Claims"); *id.* at § 7.1(g), at 9 (defining "Indemnitee").

¹²⁷ Though it has not amended its Form A to address this issue, PREMERA has agreed to modify the Articles of Incorporation to include the phrase "unless a greater requirement is set forth in the Bylaws." See PREMERA's Initial Comments, *supra* note 100 at 25 [CONFIDENTIAL].

¹²⁸ See Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, § 4.6(a), at 5 ("Presumption of Assent"); Washington Charitable Organization, Bylaws, Form A: Exhibit E-4, *supra* note 115, § 4.6(a), at 5 ("Presumption of Assent").

attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.¹²⁹

Thus, Section 4.6(a) should be re-written to comply with RCW 24.03.120, and should be restated as follows: "The director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened."

(2) Lobbying

A substantial concern arises from provisions in the Proposed Transaction that contemplate that the Foundation Shareholder may, *inter alia*, engage in substantial lobbying activities likely to be of benefit primarily to PREMERA. In that respect, the Articles of Incorporation do not require that the contributions to the Washington Charitable Organization may be used only for the promotion of the health of Washington's residents. This concern is exacerbated by PREMERA's effective control of the Foundation Shareholder, as discussed more fully with respect to the Foundation Shareholder's independence, *infra* at section IV.B.

As currently structured, the Foundation Shareholder arguably may become PREMERA's lobbyist for the deregulation of health insurers in Washington and Alaska. Such lobbying is implicitly contemplated for the stated purpose of "simplifying and reducing the administrative burdens of health care providers and Health Insurers in Washington and Alaska."¹³⁰ Although it might be contended that such a purpose may provide some indirect public benefit, the public interest is much more likely to be served best if the Foundation Shareholder provides exclusively more direct benefits to health care. Moreover, while the reduction of administrative burdens may promote efficient uses of resources, reducing the "administrative burden" may also amount to reducing regulatory oversight, which may be harmful to the public. Health care providers and health insurers are more than capable of lobbying for such legislation without the need to devote the Foundation Shareholder's assets to that purpose.

In general, the public interest is probably not best served by having the Foundation Shareholder become a proponent or opponent of legislation. It is probable that such involvement would be perceived as a conflict by one or more segments of the public. Arguments that lobbying activities may inure to the benefit of the public may fall far short of overcoming these concerns. The Commissioner should weigh the potential benefits that those assets would have provided to the public, when devoted to lobbying activities, against the public perception and very real possibility that the Foundation Shareholder will merely have become, at least in part, a lobbying vehicle for

¹²⁹ See RCW 24.03.120 (emphases added).

¹³⁰ Foundation Shareholder, Articles of Incorporation, Form A: Exhibit E-1, *supra* note 115, art. III, § 1, at 1 ("Purposes and Powers"); see also *id.* art. IV, § 2, at 3 ("Political Activity").

PREMERA and private interest groups.¹³¹ As a general matter, some factors that the Commissioner might consider are: (1) the scope of the lobbying; (2) the extent to which the lobbying would benefit PREMERA; (3) the economic and administrative resources that would be devoted to the lobbying activities; (4) the divisiveness of the issues on which the Foundation Shareholder can lobby; and (5) the extent to which the lobbying would promote the accessibility, affordability, and availability of health care in Washington. Furthermore, the Commissioner should evaluate the potential cost to the Foundation Shareholder in terms of additional taxes that may be levied, and the likelihood that the Internal Revenue Service (the "IRS") would impose those taxes.

As one of the Structural Issues presented to the applicant in February, 2003, PREMERA was given the opportunity to comment on whether (and if so, why) the Transaction should not make provision to prevent all lobbying, campaigning, or other political activity by the Charitable Organizations or the Foundation Shareholder (if one is retained). PREMERA did not respond. Moreover, PREMERA was given the opportunity to amend the Transaction, with respect to a closely-related issue, whether there would be two Foundation Shareholders and two Charitable Organizations, one of each for Alaska and Washington. Alternatively, PREMERA was asked to consider whether, if a structure were adopted that eliminated the Foundation Shareholder, the consideration should be delivered directly to the two Charitable Organizations. PREMERA neither responded to these inquiries nor provided an explanation as to why the current structure should be maintained.

PROPRIETARY MATERIAL REDACTED

But, § 501(c)(4) status might be assured in other ways. And even if lobbying activities are desirable for that reason, the scope and purpose of such activities could be defined in a manner more consistent with the fundamental purpose of the Foundation Shareholder and Charitable Organizations.

On this record, the Commissioner is justified in concluding that the Transaction is not in the public interest; to the extent that the Foundation Shareholder may devote charitable assets to lobbying activities. This concern is independent of the complete lack of independence for the Foundation Shareholder and Charitable Organizations, which is discussed *infra* at section IV.B.

¹³¹ PREMERA has recently asserted that no funds from the disposition of New PREMERA's shares transferred to the Foundation Shareholder will be used to fund these lobbying activities; however, no assurances have been provided. Moreover, using the name of the Foundation Shareholder in the public and political arena to promote purposes that are beneficial to New PREMERA may be viewed as not in the public's interest.

(3) Prudent Person Rule

The Foundation Shareholder's Articles of Incorporation propose to exempt the directors from the "prudent person" standard.¹³² This proposed lack of accountability may also impair the ability of the Proposed Transaction to satisfy the public interest. PREMERA may view this provision as necessary, however, because the Proposed Transaction contemplates that the Foundation Shareholder, initially, will have its assets (*i.e.*, PREMERA's fair market value) invested *solely* in New PREMERA's stock. Generally, under the "prudent person" rule, investing all of a trust's "eggs" in one "basket" might constitute a violation of the trustees' obligation to avoid speculative investments and to properly diversify the assets.¹³³

In this instance, the "cure" vastly outweighs the "disease." The inability of the Foundation Shareholder to diversify its portfolio immediately may not give rise to the feared liability. The duty to diversify trust assets is subject to at least two exceptions: (1) an express provision by the settlor relieving the trustee of the duty to diversify, or (2) circumstances dictating that it is not prudent to diversify.¹³⁴ The Regulators' approval of the Articles of Incorporation on the public's behalf should serve to protect the Foundation Shareholder's directors from any liability under the "prudent person" standard because the settlor, in this case, is arguably the public. It may even be appropriate to recite in any order approving the Proposed Transaction that the Foundation Shareholder and its directors are not at liberty *ab initio* to achieve the desired diversification and cannot be held accountable for such inability for some specified period of time.

It should be noted that, funding the Foundation Shareholder with New PREMERA stock instead of cash may be the only practicable method of effectuating the Transaction as proposed. Moreover, the Proposed Transaction ensures that the Foundation Shareholder's "eggs" will remain in "one basket" only temporarily, because it requires the Foundation Shareholder to divest itself of the Shares pursuant to a divestiture schedule. In addition, as the Articles of Incorporation are proposed, the Foundation Shareholder's directors will remain subject to the prudent person rule with respect to all of the Foundation Shareholder's assets other than the Shares (*i.e.*, the manner in which the Foundation Shareholder's directors invest the proceeds from the divestiture of the Shares). Further, the Foundation Shareholder's directors would remain subject to all other applicable duties such as the duty to act in good faith and in a manner the directors reasonably believe to be in the best

¹³² See Foundation Shareholder, Articles of Incorporation, Form A: Exhibit E-1, *supra* note 115, art. VII, § 1, at 4.

¹³³ See RCW 11.100.020 (providing the requirements for proper management of trust assets by a fiduciary); see also *Baker Boyer Nat'l Bank v. Garver*, 43 Wash. App. 673, 678-79, 719 P.2d 583, 587-88 (1986) (stating that, while the law is unresolved in Washington, a trustee has a general obligation to diversify investments under the prudent person rule).

¹³⁴ *Id.* at 588.

interest of the corporation.¹³⁵ Thus, if limited solely to the Foundation Shareholder's concentration of assets in New PREMERA stock (as PREMERA asserts is the intent), this provision ultimately may not raise fundamental concerns.

c. PBC's Articles of Dissolution and Plan of Distribution

PBC's proposed Articles of Dissolution comply with RCW 24.03.240 ("Articles of dissolution"). PBC will also be required to comply with additional procedural requirements, such as RCW 24.03.220 ("Voluntary dissolution"), RCW 24.03.245 ("Filing of articles of dissolution"), and RCW 24.03.230 ("Plan of distribution").

PBC's proposed Plan of Distribution appears not to comply with RCW 24.03.225 ("Distribution of assets"). Under RCW 24.03.225, a corporation's assets in dissolution shall be distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor; (2) [a]ssets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements; (3) [a]ssets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter; (4) [o]ther assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others; (5) [a]ny remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this chapter.¹³⁶

PBC's Articles of Incorporation state that:

[o]n dissolution or final liquidation of the Corporation, its net assets shall be applied and distributed to the sole voting member for the purposes for which the Corporation

¹³⁵ See RCW 24.06.153(1) (listing the duties of corporate directors and officers).

¹³⁶ RCW 24.03.225.

has been established, subject to any limitations consistent with the federal tax status of the Corporation which are in effect at the time of such distribution.¹³⁷

Technically, RCW 24.03.225(1) is irrelevant because, after PBC transfers its assets and liabilities to New PBC, PBC will retain no liabilities, and its only remaining asset will be 100 percent of New PBC's initial stock.¹³⁸ Moreover, RCW 24.03.225(2) is irrelevant because PBC's asset, New PBC stock, is not held on "condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution."¹³⁹ However, the Plan of Distribution arguably does not comply with RCW 24.03.225(3), which provides that:

[a]ssets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter.¹⁴⁰

Instead, the Plan of Distribution merely provides that, after paying all liabilities and obligations, PBC shall distribute any remaining assets to its "sole voting member, PREMERA."¹⁴¹ Were the Commissioner, in consultation with the Attorney General, to approve the proposed Plan of Distribution, such action could be construed as an admission that PBC does not hold any assets restricted to charitable, benevolent, or similar purposes. This would contradict the apparent agreement among all parties that PBC's fair market value must ultimately be transferred to the Foundation Shareholder, as discussed *infra* at III.D.2.f. However, the parties need not resolve the legal issue of whether RCW 24.03.225(3) applies, if PBC specifies in the Plan of Distribution under RCW 24.03.225(5) that all assets remaining shall be transferred to PREMERA, on condition that those assets be used only for charitable, benevolent, or similar purposes, and on further condition that upon PREMERA's dissolution, those assets be transferred to the Foundation Shareholder. Or, PREMERA, as PBC's sole member, could simply amend PBC's Articles of Incorporation and Bylaws with language similar to the foregoing in order to achieve the same result as would be

¹³⁷ PBC, Restated Articles of Incorporation, art. VIII, at 0000347 (June 30, 1998) (on file with C&B).

¹³⁸ Paragraph 1 of the Plan of Distribution unobjectionably simply treats RCW 24.03.225(1) as applying, and treats the transfer of PBC's liabilities to New PBC as adequate provision for those liabilities. See PBC, Plan of Distribution, Form A: Exhibit G-15, at 1 (Sept. 26, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitG-15.pdf> [hereinafter "Plan of Distribution, Form A: Exhibit G-15"].

¹³⁹ RCW 24.03.225(2).

¹⁴⁰ RCW 24.03.225(3).

¹⁴¹ Plan of Distribution, Form A: Exhibit G-15, *supra* note 138, at 1.

achieved under RCW 24.03.225(5) by amending the Plan of Distribution under RCW 24.03.225(4). In the absence of a curative provision, the Commissioner would be justified in concluding that the Plan of Distribution, as currently written, is not in the public interest.

d. LifeWise of Washington's Articles of Dissolution and Plan of Distribution

Because LifeWise of Washington was formed under RCW Chapter 24.06, its assets should be distributed in a manner similar to those of PREMERA as discussed in the next subsection. To the extent that the Proposed Transaction does not so require, it is not in compliance with applicable law.

e. PREMERA's Articles of Dissolution and Plan of Distribution

PREMERA's proposed Articles of Dissolution comply with RCW 24.06.275 ("Articles of dissolution"). PREMERA will also be required to comply with RCW 24.06.260 ("Voluntary dissolution") and RCW 24.06.280 ("Filing of articles of dissolution").

Furthermore, under RCW 24.06.265, PREMERA's assets are required to be distributed in the following manner:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision made therefor; (2) [a]ssets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements; (3) [r]emaining assets, if any shall be distributed to the members, shareholders or others in accordance with the provisions of the articles of incorporation.¹⁴²

As is the case for PBC, PREMERA may not be subject to RCW 24.06.265(1), because PREMERA will have transferred its liabilities to New PREMERA in exchange for 100 percent of New PREMERA's initial stock. RCW 24.06.256(1)-(2) do not apply to PREMERA's dissolution for the same reasons as RCW 24.03.225(1)-(2) do not apply to PBC's dissolution. In order to facilitate the transfer of assets to the Foundation Shareholder, language as described *supra* at section III.C.2.c, regarding PBC's dissolution should be incorporated into New PREMERA's Plan of Distribution. As discussed, such language will avoid the potential problem with respect to an argument that PBC's assets are not restricted for charitable purposes.

¹⁴² RCW 24.06.265.

f. Other Agreements

The LifeWise of Washington/New LifeWise of Washington Transfer of Assets Agreement,¹⁴³ PBC/PBC-AK Transfer of Assets Agreement,¹⁴⁴ and the PBC/New PBC Transfer of Assets Agreement¹⁴⁵ comply with RCW 24.03.035(5), which states that each corporation will have the power “[t]o sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.”¹⁴⁶ Similarly, the PREMIERA/New PREMIERA Transfer of Assets Agreement¹⁴⁷ complies with RCW 24.06.030(5), which permits a miscellaneous nonprofit corporation to transfer its assets.¹⁴⁸

3. Federal Law

In general, the Proposed Transaction is not governed in any material respect by federal law. There will, of course, be provisions of the Internal Revenue Code that will have a material impact on the Proposed Transaction and its consequences. These matters are addressed more fully in the tax analysis furnished by PwC. To the extent that PREMIERA contracts with federal agencies, such as the Office of Personnel Management or the U.S. Department of Health and Human Services’ Centers for Medicare and Medicaid Services (“CMS”), it will be required to comply with the requirements of its contracts and those agencies as they affect the contemplated transfers. But there are no general regulatory requirements or necessary approvals applicable to the Proposed Transaction under federal law.

The extent to which the Proposed Transaction will affect competition, on the other hand, may give rise to material issues under both state and federal law. These matters are addressed by the Attorney General’s office in its advisory capacity to the Commissioner. Moreover, there are certain filing requirements imposed by the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (“HSR”). HSR established a premerger notification program as a means for avoiding some of the difficulties and expense that the Federal Trade Commission (“FTC”) and the Department of Justice (“DOJ”)

¹⁴³ LifeWise/New LifeWise Transfer of Assets Agreement, Form A: Exhibit A-4A (Sept. 26, 2002), available at http://www.insurance.wa.gov/special/premera/filing/ExhibitA_of_ExhibitA-4.pdf.

¹⁴⁴ PBC/PBC-AK Transfer of Assets Agreement, Form A: Exhibit G-11 (Sept. 26, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitG-11.pdf>.

¹⁴⁵ PBC/New PBC Transfer of Assets Agreement, Form A: Exhibit G-12 (Sept. 26, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitG-12.pdf>.

¹⁴⁶ RCW 24.03.035(5).

¹⁴⁷ PREMIERA/New PREMIERA Transfer of Assets Agreement, Form A: Exhibit G-13 (Sept. 26, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitG-13.pdf>.

¹⁴⁸ RCW 24.06.030(5).

encountered upon challenging anticompetitive acquisitions after they occurred.¹⁴⁹ HSR was written as an amendment to the Clayton Act¹⁵⁰ which prohibits mergers and acquisitions where the effect "may be substantially to lessen competition, or to create a monopoly."¹⁵¹ Thus, applicability of non-tax federal laws to the Proposed Transaction arises at two levels. First, HSR promulgates certain reporting requirements. Second, and perhaps more substantively, the Clayton Act requires analysis of the competitive impact of the transaction.

a. Filing Requirements

In general, HSR requires that certain proposed acquisitions of voting stock or assets must be reported to the FTC and the DOJ prior to consummation.¹⁵² Following compliance with the reporting requirements of HSR, the parties to the acquisition must wait a specified period of time, usually thirty (30) days, before completing the transaction. This waiting period provides the FTC and the DOJ with an opportunity to review the proposed transaction at a time when remedial action is most effective, should these agencies determine that an unlawful restraint of trade is likely under the Clayton Act's substantive requirements, upon completion of the acquisition.

HSR states in part:

(a) Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if—

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and

(2) as a result of such acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person—

(A) in excess of \$200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner

¹⁴⁹ See 15 U.S.C. § 18a.

¹⁵⁰ See *id.* at §§ 12-27.

¹⁵¹ *Id.* at § 18.

¹⁵² HSR does not provide a specific deadline for reporting the proposed transaction during premerger activity.

as provided in section 8(a)(5) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or

(B)(i) in excess of \$50,000,000 (as so adjusted and published) but not in excess of \$200,000,000 (as so adjusted and published); and

(ii)(I) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more;

(II) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more; or

(III) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of \$10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d).¹⁵³

For HSR to apply to a particular transaction, it must satisfy three (3) tests: the Commerce Test at above section (a)(1); the Size-of-Person Test at above section (a)(2)(B); and the Size-of-Transaction Test, at above section (a)(2)(A).

b. The Commerce Test

According to 16 C.F.R. § 801.3, the Commerce Test is satisfied if any entity included within the "acquiring person," or any entity included within the "acquired person," is engaged in commerce or in any activity affecting commerce. Pursuant to 16 C.F.R. § 801.1(a)(1), the acquiring and acquired persons are the entities that ultimately control the buyer and the seller respectively.

¹⁵³ See 15 U.S.C. § 18a(a).

Therefore, analysis of the Commerce Test focuses on the commercial activity of the "ultimate parent entities."

As used in HSR, the term "commerce" generally means "interstate commerce" or trade among the several states.¹⁵⁴ The term "interstate commerce" has been liberally interpreted by the courts in extending the jurisdiction of the FTC. As such, "interstate commerce" has been deemed to mean all commercial intercourse between different states and all component parts of that intercourse.¹⁵⁵ Applying this expansive jurisprudential image of interstate commerce, the courts have held that an insurance company conducting a substantial part of its business across state lines is engaged in interstate commerce and, thereby, subject to the antitrust laws.¹⁵⁶ However, the extent to which such interstate commercial activity may subject an insurance company to the antitrust laws is prescribed by the McCarran-Ferguson Act in which Congress declared that the federal antitrust laws were applicable to the business of insurance but only to the extent that such business is not regulated by state law.¹⁵⁷ The reorganization of an insurance company involved in interstate commerce, although regulated by the domiciliary state, does not deprive the FTC of its antitrust jurisdiction.¹⁵⁸ As such, the Commerce Test is satisfied if one of the ultimate parent entities to the acquisition is involved in commercial intercourse between the states. PREMIER, being a Washington nonprofit corporation (and the ultimate parent entity for the acquired person), with affiliates doing business in several states (including, but not limited to, the states of Washington, Oregon, and Alaska), the Commerce Test has clearly been met in the Proposed Transaction.

c. The Size-of-Person Test

The basic Size-of-Person Test is satisfied only where at least one of the ultimate parent entities involved in the transaction has \$100 million or more in annual sales or total assets and the other has \$10 million or more.¹⁵⁹ Obviously, for the Proposed Transaction, New PREMIER will have no sales or assets at the time of the Transaction; therefore, eliminating any need for further examination of the Size-of-Person Test. However, pursuant to 15 U.S.C. § 18a(a)(2)(A), if the Size-of-Transaction Test is met by a transaction in excess \$200 million, then the Size-of-Person Test is inapplicable, and the review of reporting requirements under HSR becomes a two part analysis. Failure of the Size-of-Person Test, therefore, is material for our purposes, only if the transaction involves less than \$200 million in assets.

¹⁵⁴ See 15 U.S.C. § 12.

¹⁵⁵ *F.T.C. v. Pacific States Paper Trade Assoc.*, 273 U.S. 52 (1927).

¹⁵⁶ *United States v. South-Eastern Underwriters Ass'n.*, 322 U.S. 533 (1944).

¹⁵⁷ See 15 U.S.C. § 1012.

¹⁵⁸ *American General Ins. Co. v. Federal Trade Comm'n.* 359 F Supp. 887 (1973, DC Tex).

¹⁵⁹ See 15 U.S.C. § 18a(a)(2).

d. The Size-of-Transaction Test

The Size-of-Transaction Test is satisfied if, as a result of the acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person, (1) in excess of \$200 million or; (2) in excess of \$50 million but less than \$200 million.¹⁶⁰ Because the Proposed Transaction failed to satisfy the Size-of-Person Test, there is no reporting requirement under HSR unless the Size-of-Transaction Test is met at the \$200 million threshold level. Therefore, for an asset purchase such as the Proposed Transaction, the value of the assets to be acquired by New PREMERA must be greater than \$200 million. If the acquired assets are valued at less than \$200 million, then there is no reporting requirement under HSR.

For purposes of the relevant analysis, the value of the PREMERA assets is equal to the greater of the fair market value of such assets, or, the acquisition price, if such price is determined, presumably as part of the transaction.¹⁶¹ Pursuant to 16 C.F.R. § 801.10(c)(2), the acquisition price shall include the value of all consideration to be exchanged for PREMERA's assets. Therefore, the acquisition price must also include the value of any liabilities assumed. Furthermore, 16 C.F.R. § 801.10(c)(3) provides that the fair market value shall be determined, in good faith, by the board of directors of the ultimate parent entity included within the acquiring person (New PREMERA), or by an entity delegated that function by such board. The statute further provides that the fair market value determination must be made as of any day within sixty (60) calendar days prior to the filing of the notification required by HSR, or, if such notification has not been filed, within sixty (60) calendar days prior to the consummation of the acquisition.

For our purposes, the value of the assets can be viewed as the value of the PREMERA. Of course, that value will be determined as part of the pending review. In any event, given current 2002 net worth of \$389 million and PREMERA's own estimates of 2003 net worth at approximately [REDACTED]¹⁶² there is little question that this test is met.

PROPRIETARY MATERIAL
REDACTED

e. Exemptions

Assuming that the Proposed Transaction is valued in excess of \$200 million, PREMERA and New PREMERA must comply with the notification requirements of HSR unless the transaction is exempt pursuant to 15 U.S.C. § 18(a)(c) and 16 C.F.R. § 802.1, *et seq.* None of the twenty-seven (27) exemptions provided in HSR are applicable to the Proposed Transaction.

¹⁶⁰ See 15 U.S.C. § 18a(a)(2)(A).

¹⁶¹ See 16 C.F.R. § 801.10(b).

¹⁶² Blackstone Valuation and Fairness Report, *supra* note 35, at 34 [CONFIDENTIAL].

f. Compliance

Because the Proposed Transaction will almost certainly be valued in excess of \$200 million, both the acquired person (PREMERA) and the acquiring person (New PREMERA) must file the appropriate notice of the transaction with the FTC and the DOJ. Such notice, referred to as the Notification and Report Form, solicits information that the enforcement agencies use to help evaluate the antitrust implications of the proposed transaction. In general, the filing parties are required to identify the persons involved and the structure of the transaction. Reporting parties must also provide certain documents, such as balance sheets and other financial data, as well as copies of documents that have been filed with the Securities and Exchange Commission. In addition, the parties are required to submit certain planning and evaluation documents that pertain to the proposed transaction. In connection with the filing of required notice under HSR, the acquiring person (New PREMERA) must pay a filing fee to the FTC of: (1) \$45,000 for transactions valued between \$50 million and \$100 million; (2) \$125,000 for transactions valued between \$100 million and \$500 million; and (3) \$280,000 for transactions valued at \$500 million or greater.¹⁶³

Upon filing proper notice, the FTC and DOJ begin their review of the transaction during the 30-day statutory waiting period. Any filing person may request that the waiting period be terminated before the statutory period expires. Such a request for early termination will be granted only if: (1) at least one of the reporting parties specifies the request in its filing; (2) all reporting parties have submitted compliant filings; and (3) the FTC and DOJ have completed their review and determined not to take any enforcement action during the waiting period.¹⁶⁴

If a reportable transaction is consummated without filing the required prior notification, or without waiting until expiration of the statutory waiting period, the parties involved may be subject to civil penalties. HSR provides that any person, or any officer, director, or partner thereof shall be liable for a penalty of up to \$11,000 a day for each day the person is in violation of the act.¹⁶⁵ Moreover, the enforcement agencies may also obtain other relief to remedy violations of HSR, such as an order requiring the person to divest assets or voting securities acquired in violation of the act.¹⁶⁶

g. Substantive Analysis

Assuming that PREMERA complies with HSR's reporting requirements, the remaining issue is whether the Transaction substantially lessens competition or tends to create a monopoly under the

¹⁶³ See 16 C.F.R. § 803.9.

¹⁶⁴ See 16 C.F.R. § 803.11 and FTC Formal Interpretation issued August 20, 1982.

¹⁶⁵ See 15 U.S.C. § 18(a)(g).

¹⁶⁶ *Id.*

Clayton Act's substantive federal antitrust requirements. The Attorney General, in its advisory role, is devoting substantial attention to a similar issue under applicable state law, as described *supra* at III.C.1.a.(2). The Holding Company Act's analysis is similar to the Clayton Act's analysis, under which representatives of the FTC and DOJ will screen the Proposed Transaction for likely anticompetitive effects. Typically, conversions, in which the nonprofit company intends to conduct an IPO after the conversion such as the Proposed Transaction, do not give rise to any competition concerns because they do not involve a merger of competitors. Immediately post-conversion, the market concentration, as well as the market shares of the various competitors, will be virtually unchanged from pre-conversion levels. Although it may be argued that benefits arising from the Proposed Transaction, including but not limited to a greater access to capital, may allow PREMERA to compete more aggressively against its rivals, such conduct, in and of itself, would not violate federal antitrust law, which seeks to protect fair and reasonable competition and not competitors.¹⁶⁷

In order to mount a successful challenge to the Proposed Transaction, the facts must establish a showing of some incipient anticompetitive harm to consumer welfare.¹⁶⁸ Pursuant to FTC and DOJ merger guidelines, such requisite injury may be established through a showing that the Proposed Transaction will likely create, enhance, or facilitate the exercise of "market power" by PREMERA.¹⁶⁹ The FTC and DOJ define "market power" as the ability to profitably maintain prices above competitive levels for a significant period of time, or the power to depress prices to a level below the competitive price and, thereby, depress output.¹⁷⁰

Current merger guidelines applied by the FTC and DOJ in evaluating "market power" suggest that anticompetitive harm is unlikely to result from the Proposed Transaction. For the typical horizontal merger, the FTC and DOJ analytical tool of choice is the Herfindahl-Hirschman Index ("HHI") of market concentration.¹⁷¹ Following identification of the subject market, including its products, participants and geographic area, the HHI index of market concentration is calculated by summing the squares of the individual market shares of all participants. The HHI is a useful indicator of likely potential anticompetitive effects because "market power" is known to move in correlation with market concentration. In evaluating horizontal mergers, the FTC and DOJ consider both the post-merger market concentration and the increase in concentration resulting from the merger as follows:

¹⁶⁷ *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962).

¹⁶⁸ *Rebel Oil Co., Inc. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1433 (9th Cir. 1995).

¹⁶⁹ The U.S. Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

- a) Post-Merger HHI below 1000. Markets in this region are regarded as unconcentrated. Mergers resulting in unconcentrated markets are deemed unlikely to have adverse competitive effects and ordinarily require no further analysis.
- b) Post-Merger HHI between 1000 and 1800. Markets in this region are regarded as moderately concentrated. Mergers producing an increase in the HHI of less than 100 points in moderately concentrated markets are deemed unlikely to have adverse competitive consequences and ordinarily require no further analysis. Mergers producing an increase in the HHI of more than 100 in moderately concentrated markets potentially raise significant competitive concerns depending on the status of other relevant factors.
- c) Post-Merger HHI above 1800. Markets in this region are regarded as highly concentrated. Mergers producing an increase in the HHI of less than 50 points in highly concentrated markets are unlikely to have adverse competitive consequences and ordinarily require no further analysis. Mergers producing an increase in the HHI of more than 50 points in highly concentrated markets potentially raise significant competitive concerns depending upon the status of factors such as those identified in the paragraph above. Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise. This presumption may be overcome by a showing that other factors make it unlikely that the merger will result in an anticompetitive harm.

It is important to note that the legislative history of the Clayton Act indicates that it was enacted to prevent trends toward market concentration which may substantially lessen competition.¹⁷² Therefore, in evaluating the likelihood of post-merger anticompetitive effects, the merger guidelines summarized above focus on post-merger increases in the HHI. This suggests that the FTC and DOJ may not challenge the Proposed Transaction because it will create no post-merger increase in the HHI. However, the FTC and DOJ guidelines do not totally foreclose the possibility of finding an antitrust violation when there is no post-merger increase in the HHI. An argument may be made that other factors so strongly indicate the likelihood of anticompetitive harm, that the FTC and DOJ should be moved to challenge the proposed merger, even though the Transaction is structured so as to bring about no post-merger increase in the HHI.

In addition to the HHI, other relevant factors discussed in the FTC and DOJ merger guidelines include: (1) the likelihood or history of collusion in the market; (2) the ease of competitor entry into the market; (3) the market efficiencies created by the merger; and (4) whether one of the participants in the merger is a "failing firm." It is also important to note that in addition to the factors considered by the federal agencies, the National Association of Attorneys General

¹⁷² *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962).

include two additional inquiries when evaluating horizontal mergers: (1) whether the merger involves a market leader; and (2) the presence of powerful or sophisticated buyers.¹⁷³ Analysis of the HHI and the six additional economic factors in the PREMERA conversion is beyond the scope of this Final Report. However, unless each of these factors, and perhaps others unique to the subject market, point strongly toward the likelihood of anticompetitive harm, it is unlikely that the FTC or DOJ will challenge the Proposed Transaction.

D. Fairness to Policyholders, Providers, and Public

As discussed *supra* at section III.C.1.a, the Holding Company Acts require the Commissioner to evaluate six potentially disqualifying factors with respect to a change of control. The Commissioner is required to approve the Transaction unless he makes one of the following fact-findings: (1) after the change of control, the domestic health carrier would not be able to satisfy a domestic health carrier's registration requirements; (2) there is substantial evidence that the acquisition would substantially lessen competition or tend to create a monopoly in insurance in Washington; (3) the acquiring party's financial condition is such as might jeopardize the health carrier's financial stability or prejudice its subscribers' interest; (4) the plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to the health carrier's subscribers, and not in the public interest; (5) the competence, experience, and integrity of those persons who would control the health carrier's operations are such that it would not be in the interest of the health carrier's subscribers, and of the public, to permit the acquisition of control; or (6) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.¹⁷⁴

The first two of these factors relate to licensing and registration requirements and the Antitrust Inquiry, which already have been discussed *supra* at section III.C.1. As concluded, PREMERA is able to satisfy the licensing and registration requirements. Secondly, Dr. Leffler, consultant for the Attorney General, has advised the OIC that PREMERA's market power in Eastern Washington lays the predicate for a potential increase in premium rates. The remaining four factors are analyzed in this section, because each generally relates to an analysis of the Proposed Transaction's fairness to policyholders, providers, and the public, which is a separate assignment under Stage One of C&B's Engagement.

1. Impact on Financial Condition

With respect to the third of six potentially disqualifying facts, the Commissioner must determine whether New PREMERA's financial condition might jeopardize the acquired domestic

¹⁷³ Horizontal Merger Guidelines of the National Association of Attorneys General.

¹⁷⁴ See *supra* note 58 and accompanying text.

health carriers' financial stability or prejudice their subscribers' interests.¹⁷⁵ The Transaction's potential impact on PREMIERA's financial condition is the subject of extensive consideration by other Consultants. The conclusions produced by those analyses are fundamentally instructive as to the Proposed Transaction's compliance with this substantive requirement. Some general comments, however, will serve to place this issue in perspective.

The Transaction does not involve a third-party acquisition. Therefore, the possibility of a new parent or affiliate diluting PREMIERA's financial resources is not present in the Proposed Transaction. Rather, the Proposed Transaction is simply a series of transactions whereby nonprofit companies are converted into for-profit companies. Substantially all of PREMIERA's assets are proposed to be conveyed to New PREMIERA. The only asset proposed to be conveyed to the Foundation Shareholder or the Charitable Organizations is New PREMIERA's stock. Of course, the Transaction itself will also entail significant costs, but these are not expected to be material to PREMIERA's financial viability. The conversion will also impose upon New PREMIERA recurring and continuing costs inherent in operating as a publicly-traded company, which, as noted by Blackstone [PROPRIETARY MATERIAL REDACTED]¹⁷⁶ They are in addition to the one-time cost of "going public" that are also likely to be substantial. In the aggregate, these initial and ongoing conversion costs are not expected to impair PREMIERA's financial viability, but they will constitute material increases in operating costs. Of somewhat greater concern is the possibility that the Transaction may impose substantial new liabilities on New PREMIERA.

PREMIERA's premium tax obligation in Alaska will increase from two percent to 2.7 percent. Moreover, key among the possible new liabilities are potentially adverse federal income tax consequences. PREMIERA has not been exempt from federal income taxes since 1987 and has never been exempt from Washington state taxes.¹⁷⁷ However, in 1987, when Congress revoked the availability of tax exemptions to BCBS plans under I.R.C. § 501(c), it did provide certain other favorable tax treatment for those plans, such as certain deductions and favorable treatment of unearned premium reserves under I.R.C. § 833(b). But, the continued availability of those benefits is subject to a condition that the company not experience a material change in operations or structure.¹⁷⁸ Preliminary indications are that the loss of these benefits would be a materially adverse consequence for PREMIERA. Rather than being subject to the lower effective tax rate of 20 percent, PREMIERA will be subject to the typical effective corporate federal income tax rate of 35 percent

¹⁷⁵ RCW 48.31C.030(5)(a)(ii)(C)(I); see RCW 48.31B.015(4)(a)(iii) (substituting "policyholder" for "subscriber" under the IHCA).

¹⁷⁶ Blackstone Valuation and Fairness Report, *supra* note 35, at 7 [CONFIDENTIAL].

¹⁷⁷ Per PREMIERA's management.

¹⁷⁸ I.R.C. § 833(c)(2)(C).

if these benefits are lost.¹⁷⁹ However, PREMERA has AMTs, NOLs, and other deferred tax items that can be used temporarily to offset the higher effective tax rate if the IRS determines that PREMERA has experienced a material change in operations.¹⁸⁰ Nonetheless, these credits will expire in 2007 according to projections, and thus, PREMERA could be subject to these higher effective tax rates at that time.¹⁸¹

Although PREMERA's tax consultant, Ernest & Young ("E&Y"), has provided a "more likely than not" draft short-form opinion indicating that the Transaction will not result in such a material change,¹⁸² PREMERA has refused to provide a substantive opinion underlying the draft opinion, otherwise referred to as a "long-form opinion." Moreover, PwC has suggested that a "more likely than not" tax opinion may be viewed as a low level of assurance for a transaction of this type.¹⁸³ Despite the opinion provided by E&Y, PwC states that the risk of PREMERA being deemed by the IRS to have experienced a material change is significant.¹⁸⁴ This is a point of substantial concern due to the uncertainty surrounding this issue, the lack of direct authority, the view of the IRS, and the unavailability of a stronger opinion by E&Y.¹⁸⁵ Therefore, the Commissioner does have sufficient evidence on the record to make a finding that the Proposed Transaction is not in the public interest on this basis. The Consultants conducted an analysis of the potential magnitude of the possible adverse tax consequences and the effect, if any, that they would have on New PREMERA's financial condition. PwC has indicated that those effects are material as evidenced by the deductions PREMERA has taken over the last few years totaling \$32 million in 2002, \$50 million in 2001, \$50 million in 2000, and \$30 million in 1999.¹⁸⁶ Although PREMERA has noted that any potential tax liability would not be passed on to subscribers,¹⁸⁷ there is no assurance of this fact. Furthermore, such a material change may also materially affect New PREMERA's value, as noted by Blackstone.¹⁸⁸ The effect of the loss of the I.R.C. § 833 deduction will be an immediate and continuing increase in tax liability reported on PREMERA's GAAP financial statement (even

¹⁷⁹ PwC Tax Report, *supra* note 33, at 14 [CONFIDENTIAL].

¹⁸⁰ *Id.* [CONFIDENTIAL].

¹⁸¹ *Id.* [CONFIDENTIAL].

¹⁸² *Id.* [CONFIDENTIAL].

¹⁸³ *Id.* at 12 [CONFIDENTIAL].

¹⁸⁴ *Id.* at 15 [CONFIDENTIAL].

¹⁸⁵ *Id.* at 14-15 [CONFIDENTIAL].

¹⁸⁶ *Id.* at 13 n.9 [CONFIDENTIAL].

¹⁸⁷ *Id.* at 12 [CONFIDENTIAL].

¹⁸⁸ Blackstone Valuation and Fairness Report, *supra* note 35, at 9 [CONFIDENTIAL].

if offset temporarily by the utilization of other favorable tax measures). PwC has also identified other tax provisions that may be triggered as a result of the Transaction; however, those are either immaterial, or PREMERA has more authority to support its position that those tax provisions will not be triggered.¹⁸⁹

In addition, PREMERA contemplates that the Foundation Shareholder should be liable for any tax consequences resulting from the Transaction pursuant to the terms of the Indemnification Agreement.¹⁹⁰ The fairness of the Indemnification Agreement is described in greater detail *infra* at section IV.C.1.f; however, it is worth mentioning that imposing the burden of these tax consequences exclusively on the Foundation Shareholder is fundamentally unfair to the public.

Overall, the Commissioner has sufficient evidence on the record to consider, in deciding whether to disapprove the Transaction, the expected material adverse financial consequences, consisting mainly in increased costs or liabilities, such as the rise in Alaska premium taxes, the increase in operating costs, and the potential loss of the benefit of I.R.C. § 833(b).

2. Fairness and Reasonableness of PREMERA's Proposal

As to the fourth potentially disqualifying fact, the Commissioner must determine whether New PREMERA's plans to sell assets, consolidate or merge with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to

subscribers or policyholders, and not in the public interest.¹⁹¹ Overall, this factor involves the analysis of many different facets of the Proposed Transaction. As a starting point, the standard by which this determination is to be made should be considered. Additionally, due to this factor's heavy emphasis on the public interest, an analysis of the meaning of "public interest" is appropriate as a further preliminary step. This determination entails the use of various principles of statutory construction, such as the ordinary meaning of the term, policy considerations, and the doctrine of *in pari materia*. In due course, this factor of the Holding Company Acts also requires an analysis of the impact of the Proposed Transaction on availability, accessibility, and affordability of health insurance, including negative financial impacts on subscribers, policyholders, and providers, and the consequences for uninsured and underinsured populations. Lastly, this factor also delves into greater detail into management's due diligence obligations.

¹⁸⁹ PwC Tax Report, *supra* note 33, at 3-7 [CONFIDENTIAL].

¹⁹⁰ See PREMERA Answers Consultant Exhibit B Questions, at 0030092 (Feb. 10, 2003) (on file with C&B) (stating that PREMERA considers the scope of the Indemnification Agreement "to require the Foundation Shareholder to indemnify PREMERA from the potential loss of the I.R.C. § 833(b) deduction or other future tax liabilities as a result of the loss of an existing tax status") [CONFIDENTIAL].

¹⁹¹ See RCW 48.31C.030(5)(a)(ii)(C)(II); *see also* 48.31B.015(4)(a)(iv).

a. Balancing Test, Ordinary Meaning of Public Interest, and Policy Considerations

As a practical matter and general proposition, in making a determination as to whether the Transaction is unfair and unreasonable to subscribers or policyholders, and not in the public interest, the Commissioner may elect to balance the Transaction's anticipated adverse consequences to the subscribers, policyholders, and the public with the Transaction's potential benefits. This balancing test has been recognized implicitly by the Supreme Court of Kansas under a statute substantially similar to the Holding Company Acts.¹⁹²

Additionally, reference should be made to the ordinary meaning of the terms "unfair," "unreasonable," and "public interest," because these terms are undefined within the Holding Company Acts.¹⁹³ All three terms are in common usage and have accepted meanings. Of course, unfair is the opposite of fair, and unreasonable is the opposite of reasonable. "Fair" means free from favor toward either or any side.¹⁹⁴ "Fair implies an elimination of one's own feelings, prejudices, and desires, so as to achieve a proper *balance of conflicting interests*."¹⁹⁵ "Reasonable" means "being in accordance with reason."¹⁹⁶ According to BLACK'S LAW DICTIONARY, "public interest" is "something in which the public as a whole has a stake."¹⁹⁷ The ordinary meanings of the undefined statutory terms may be of limited assistance, but suggest that the requirement that New PREMIER's plans not be unfair and unreasonable to subscribers or policyholders, and not in the public interest,¹⁹⁸ requires that any purported benefits of the Transaction *to the company* must not, on balance, prejudice subscribers or policyholders, and the public. That is, any purported benefits to subscribers, policyholders, and the public, must be balanced against any negative effects to those

¹⁹² The Insurance Commissioner can "balance" the insurer's business interests with the public interest in determining that the policy of protecting the public interest outweighs any of the potential positive effects on the insurer's business interests. See *Blue Cross and Blue Shield of Kansas*, 2003 Kan. LEXIS 481, *52-53. The Insurance Commissioner did not improperly shift the burden of proof to the applicant by merely weighing the evidence and finding that the Insurance Commissioner's consultant's evidence was more weighty and persuasive than that of the applicant. *Id.* at *85.

¹⁹³ See *State v. Smith*, 117 Wash. 2d 263, 271, 814 P.2d 652, 655 (1991) (stating the Washington Supreme Court's rule that "[w]ords are given the meaning provided by the statute or, in the absence of specific definition, their ordinary meaning").

¹⁹⁴ MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 417 (10th ed. 1994) (discussing synonyms under definition of "fair").

¹⁹⁵ *Id.* (emphasis added).

¹⁹⁶ *Id.* at 974.

¹⁹⁷ BLACK'S LAW DICTIONARY 1244 (7th ed. 1999).

¹⁹⁸ See RCW 48.31C.030(5)(a)(ii)(C)(II); see also 48.31B.015(4)(a)(iv).

constituencies, to determine whether, overall, they will be prejudiced as the result of a transaction that the converting company believes to be in its best interest or in the best interest of management.

It is worth noting that the Commissioner's evaluation of whether the Proposed Transaction is unfair and unreasonable to subscribers or policyholders, and not in the public interest, is not limited by the business judgment rule. Under the business judgment rule, a court will not substitute its judgment for management's judgment, as long as appropriate procedures and expert assistance were used.¹⁹⁹ However, the business judgment rule applies to a determination of the circumstances under which an officer or director may be liable for the adverse consequences of his or her conduct, but does not address whether such conduct was in the public interest.²⁰⁰ "While the business judgment rule reflects a judicial policy of declining to substitute a court's judgment for that of a corporation's directors . . . , that policy has no application to allegations that a public benefit corporation has abandoned any charitable purpose and has pursued private, rather than public, interests."²⁰¹ Similarly, while courts typically do not interfere with internal corporate matters, such a policy is inapplicable when "the legislature has specifically given the Attorney General and the court's authority and responsibility to ensure that nonprofit public benefit corporations operate in the public interest and not for private gain."²⁰² For example, Tennessee's public policy, as expressed by the legislature, is that intervention in these situations is appropriate because "the public interest is involved and the activities involved are not merely 'internal corporate matters.'"²⁰³ Additionally, in a nonprofit corporate context, several courts have indicated that "the modern trend is to apply corporate, rather than trust principles, in determining the liability of the directors of charitable corporations because their functions are virtually indistinguishable from those of their "'pure' corporate counterparts."²⁰⁴ Although a nonprofit board is governed generally by corporate law principles, if a nonprofit corporation's nonprofit purpose or structure will be significantly altered,

¹⁹⁹ See *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985) (stating "[a] hallmark of the business judgment rule is that a court will not substitute its judgment for that of the board if the latter's decision can be 'attributed to any rational business purpose'" (citing *Sinclair Oil Corp. v. Levien*, 280 A.2d 717, 720 (Del. 1971)); see also *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (discussing the limits to the protection afforded management by the business judgment rule).

²⁰⁰ See *Summers v. Cherokee Children & Family Servs., Inc.*, No. M2001-00880-COA-R3-CV, 2002 Tenn. App. LEXIS 699, at *108-09 (2002).

²⁰¹ *Id.*

²⁰² *Id.* at *109.

²⁰³ *Id.*

²⁰⁴ *O'Donnell v. Sardegna*, 646 A.2d 398, 408 (Md. 1994) (citing *Stern v. Lucy Webb Hayes Nat'l Training Sch. for Deaconesses & Missionaries*, 381 F. Supp. 1003, 1013 (D.D.C. 1974)); see also *Blue Cross & Blue Shield of Mich. v. Baerwaldt*, 361 N.W.2d 742, 748 (Mich. Ct. App. 1984) (holding that the Insurance Commissioner could not merely substitute her judgment for that of a Blues plan's board of directors but rather, under the applicable statute, could only disapprove rates which were "unfair or unreasonable").

then that decision seems to be governed by a stricter charitable trust law standard.²⁰⁵ A charitable corporation has the power to amend purposes to the extent that the new purposes are not inconsistent with the corporation's original purpose.²⁰⁶ "The line of demarcation at which point the courts will interfere with the discretion of those governing a public charity reasonably is the point of substantial departure by the governors (or Board) from the dominant purpose of the charity. . . ."²⁰⁷ Clearly, the Transaction would mark a significant departure from PREMERA's historical structure and public benefit purpose. Similarly, in the attempted conversion of the Kansas BCBS plan, the Kansas Supreme Court noted that although the Insurance Commissioner could not "get involved in the board's management decisions [she could] deny an acquisition based on their management decisions because of her authority pursuant to the acquisition statute, *e.g.*, when it is not in the public interest."²⁰⁸

While Washington law does not promulgate a test for whether the Transaction is unfair and unreasonable to subscribers or policyholders, and not in the public interest, the ordinary meaning of those terms, along with the foregoing policy considerations in protecting the public, require an analysis of PREMERA's substantive decisions. As a practical matter, the Commissioner must balance the Transaction's anticipated benefits against its expected adverse consequences for policyholders, subscribers, and the public. As part of this analysis, the Commissioner should certainly consider PREMERA's arguments in support of the Proposed Transaction, as well as contrary submissions by other parties.

b. Comparison of Public Interest Under the Holding Company Acts to Statutory Requirements and Policy Concerns of Acquisitions of Nonprofit Hospitals in Washington

In addition to the ordinary meaning of the "public interest," the Commissioner may, under the statutory construction principle of *in pari materia*, look to any other Washington statutes that

²⁰⁵ Robert A. Boisture & Douglas N. Varley, *State Attorneys General's Legal Authority to Police the Sale of Nonprofit Hospitals and HMOs*, 13 EXEMPT ORG. TAX REV. 227, 228 (1996) ("While charitable corporations are not treated as trusts for all purposes, courts and commentators have taken the position that the assets of a charitable corporation are impressed with a charitable trust limiting the purposes for which they can be used to the purposes of the corporation as those purposes were defined at the time the assets were given.").

²⁰⁶ See *Attorney Gen. v. Hahnemann Hosp.*, 494 N.E.2d 1011, 1020-21 (Mass. 1986) (stating that the new charitable purposes must be "similar and not contradictory" to the old charitable purposes, to protect the public from having the funds applied to any charitable purpose).

²⁰⁷ *Taylor v. Baldwin*, 247 S.W.2d 741, 750 (Mo. 1952).

²⁰⁸ *Blue Cross and Blue Shield of Kan., Inc.*, 2003 Kan. LEXIS 481, *41.

relate to the same subject matter and are not inconsistent with the Holding Company Acts.²⁰⁹ Arguably, RCW Chapter 70.45 ("Acquisition of Nonprofit Hospitals"), which sets forth requirements applicable to a nonprofit hospital's conversion, relates to the same subject matter as the Holding Company Acts. RCW Chapter 70.45 expresses the public interest as follows:

The health of the people of our state is a most important public concern. The state has an interest in assuring the continued existence of accessible, affordable health care facilities that are responsive to the needs of the communities in which they exist. The state also has a responsibility to protect the public interest in nonprofit hospitals. . . .²¹⁰

In light of the foregoing expression of the public interest, the legislature has given content to the meaning of "the public interest," by requiring that an acquisition of a nonprofit hospital by a for-profit entity not be approved unless there is a determination that, *inter alia*:

(1) Sufficient safeguards are included to assure the affected community continued access to affordable care, and that alternative sources of care are available in the community should the acquisition result in a reduction or elimination of particular health services; [and] . . . (4) [t]he acquiring person and parties to the acquisition are committed to providing health care to the disadvantaged, the uninsured, and the underinsured and to providing benefits to promote improved health in the affected community. Activities and funding provided under RCW 70.45.070(8) [*i.e.*, the statute requiring that the value of nonprofit hospital charitable assets be safeguarded and used for appropriate charitable health purposes] may be considered in evaluating compliance with this commitment.²¹¹

It may be argued that the subject matter of RCW Chapter 70.45 is not sufficiently related to the Proposed Transaction to warrant its application under the doctrine of *in pari materia*. But, to the extent that both matters concern nonprofit health care entity conversions, the doctrine may indeed be applicable. Moreover, whether or not applicable under the doctrine of *in pari materia*, the statute does articulate an important public policy of the State of Washington. Because the health of the people of Washington is a most important public concern, the state, acting in *parens patriae* through its agent, the Commissioner, has an interest in assuring the continued availability of accessible and affordable health insurance. Much as in the nonprofit hospital context, the public

²⁰⁹ See *Hallauer v. Spectrum Props., Inc.*, 143 Wash. 2d 126, 146, 18 P.3d 540, 550 (2001) (holding that where statutes relate to the same subject matter, they are "'to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes'" (citing *State v. Wright*, 84 Wash. 2d 864, 867, 529 P.2d 453, 457 (1974))).

²¹⁰ RCW 70.45.010.


²¹¹ RCW 70.45.080(1), (4).

interest (including the interests of subscribers and policyholders), which the Commissioner should determine are not impacted adversely, includes, *inter alia*, the following: (1) whether affordable health insurance is accessible; (2) whether alternative sources of affordable health insurance are available in the community if there is a reduction or elimination of any particular health insurance offerings; (3) whether health insurance will be provided to the disadvantaged, the uninsured, and the underinsured; and (4) whether benefits will be provided to promote improved health in the affected community.


c. Availability of Accessible, Affordable Health Insurance

The Commissioner must consider the Transaction's likely effect on the availability of accessible, affordable health insurance to determine whether the Transaction is unfair and unreasonable to subscribers or policyholders, and not in the public interest.²¹² This consideration entails at least two distinct, but closely related, elements: (1) the extent to which PREMIERA's products will result in a negative financial impact for subscribers or policyholders as a result of the Transaction; and (2) the extent to which, as a result of the Proposed Transaction, New PREMIERA will reduce or change the products it offers, particularly in impaired markets. PwC's reports will focus extensively on these issues.

(1) Negative Financial Impact for Subscribers or Policyholders

As a general matter, it should be observed that PREMIERA appears to contemplate becoming publicly traded immediately, or shortly, after its conversion. This intent presents important implications for this fairness analysis. Axiomatically, a publicly-traded company must strive to fulfill its stockholders' expectations. Failing to do so may result in material declines in its stock's trading price, which, in turn, eventually creates pressure to change the management and/or the board of directors. Key among stockholder expectations are the company's profits from its operations (the "operating margin"). For a company like PREMIERA, the operating margin can be understood to consist of the ratio of underwriting profits (the portion of total premiums left after paying claims and administrative expenses) to total premium revenue.²¹³ 

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 In recent history, PREMIERA's operating margin has been approximately one percent,

²¹² Cf. RCW 70.45.010 (explaining that the state not only has an interest in accessible, affordable health care facilities, but also a "responsibility to protect the public interest in nonprofit hospitals").

²¹³ Deliberately excluded from this calculation are returns on invested assets (investment income), because those are not attributable to insurance operations, but rather to investment strategies typically not unique to the insurance industry.

²¹⁴ PREMIERA, Board of Directors Meeting, at 0037102 (Jan. 24, 2002) (as presented at the Feb. 6, 2002, Meeting) (on file with C&B) [CONFIDENTIAL].

as opposed to the median of approximately four percent for publicly-traded companies.²¹⁵ It is not unreasonable to conclude that a converted, for-profit company like New PREMERA, contemplating an IPO, would feel pressure to improve these operating results in order to attract investors in its offering or, perhaps more importantly, to increase its value prior to secondary offerings [

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An improvement in operating margins, logically, can occur in only two ways: increase revenues or reduce expenses. Increasing revenues for the purpose of improving operating margins can, in turn, be accomplished in two ways: raise premiums generally or increase relatively more profitable business (or, conversely, reduce the amount of business that is unprofitable, or relatively less profitable). Clearly, either measure can have materially adverse consequences for subscribers, policyholders, and the public. With respect to potential premium increases, PREMERA will most probably be pressured to raise rates for those products in which it has not historically maximized the premiums charged to customers. Thus, PREMERA will most likely direct any potential rate increases to those markets in which it has a dominant share with little competition in order to minimize the effects on its market share while maximizing profitability. From a business standpoint, PREMERA would probably be willing to lose market share to the extent that the overall profitability of the company increases. PwC has indicated that PREMERA has a dominant market share in Eastern Washington, capturing approximately [] percent of the overall market.²¹⁸ PREMERA's market share in Eastern Washington by line of business approximates [] percent, [] percent, and [] percent, for individual, small group, and large group business, respectively.²¹⁹ PwC has determined that the individual and regulated small group product lines in Eastern Washington would be affected the most significantly requiring rate increases of between [] to [] percent and [] to [] percent, respectively, to meet target expectations.²²⁰ Moreover, PREMERA has not historically maximized the premiums that it could charge in those markets. Rather than merely increasing premiums, PREMERA might increase more profitable business if it could do so in order to improve its operating margin. But, as a practical matter, it would be far too difficult to increase

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²¹⁵ See PBC, Performance and Outlook Meeting: Being a Public Company, at 0017127 (Sept. 25, 2002) (on file with C&B) (stating that, while the median public company operating margin is 3.8 percent, PREMERA had improved from one percent to three percent) [CONFIDENTIAL].

²¹⁶ PREMERA, Board of Directors Meeting, at 0037102 (Jan. 24, 2002) (as presented at Feb. 6, 2002, Meeting) (on file with C&B) [CONFIDENTIAL].

²¹⁷ *Id.* at 0037112 [CONFIDENTIAL].

²¹⁸ PwC Economic Impact Report, *supra* 31, at 35 [CONFIDENTIAL].

²¹⁹ *Id.* at 35 (Table 5-5) [CONFIDENTIAL].

²²⁰ *Id.* at 97 [CONFIDENTIAL].

profitable business. Alternatively, PREMERA could decrease unprofitable business by exiting unprofitable markets and product lines. Obviously, if PREMERA exited such markets or product lines, then those subscribers and policyholders would be affected adversely as described *infra* at III.D.2.c.(2).²²¹ At this point, it is worth mentioning that PREMERA implies that the Transaction would tend to have a moderating effect on premiums, because it would enable PREMERA to access capital through the equity markets rather than "charging more for services and/or paying less for third-party vendor services."²²² However, PREMERA has provided no use for the additional capital that would result in the moderation of the increase in premium.

Secondly, reducing expenses can also generally be accomplished in two ways: reducing sales, general, and administrative ("SG&A") expenses, and/or reducing claims expenses. Notably, for example, PREMERA's SG&A expenses as a percentage of revenue estimated for 2003 was [] percent, as compared to a mean of [] percent for public companies.²²³ It is not unreasonable to conclude that New PREMERA will be pressured to reduce its SG&A expenses. Arguably, reducing SG&A expenses can be accomplished without adverse consequences to subscribers, policyholders, and the public. In the Overview of New PREMERA Operations and Strategy and Rationale for Conversion (the "Business Case"), PREMERA states that its "financial goals include improving its margin over time through realization of administrative efficiencies,"²²⁴ even if PREMERA remains a nonprofit company. For example, PREMERA might increase the efficiency of its operations. This begs the question as to the necessity of converting from a nonprofit company to a for-profit company if administrative efficiencies will be sought whether or not the Proposed Transaction occurs. There is no evidence that PREMERA would generate greater administrative efficiencies with additional capital than it would without additional capital. In fact, PREMERA stated that the proceeds from the IPO would be "invested primarily in short-term and medium-term fixed income securities."²²⁵ Contrary to the foregoing stated uses, PREMERA has also suggested that the additional capital could be used for technological capital expenditures. However, as will be shown *infra* at section III.D.2.d, this suggestion should not be given much weight.

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Conversely, reducing SG&A expenses might have a materially adverse effect on subscribers, policyholders, and the public, because New PREMERA might reduce SG&A expenses simply by

²²¹ Although this method of improvement actually decreases revenues, it does increase the overall operating margin.

²²² Business Case, Form A: Exhibit E-7, *supra* note 4, at 27 [CONFIDENTIAL].

²²³ Blackstone Valuation and Fairness Report, *supra* note 35, at 43 [CONFIDENTIAL]. PBC, Performance and Outlook Meeting: Being a Public Company, at 0017127 (Sept. 25, 2002) (on file with C&B) (stating that the median SG&A expenses for comparable companies was 14.5 percent) [CONFIDENTIAL].

²²⁴ Business Case, Form A: Exhibit E-7, *supra* note 4, at 28 [CONFIDENTIAL].

²²⁵ Capital Uses, at 0035342 (April 25, 2003) (on file with C&B) [hereinafter "Capital Uses"] [CONFIDENTIAL].

reducing the quantity or quality of services to claimants and members. To avoid the conclusion that the improvement will come at the expense of policyholder services, PREMERA must demonstrate how it can become more efficient without sacrificing the interests of subscribers, policyholders, and the public. Otherwise, the Commissioner may conclude that subscribers will be adversely affected in this manner.

With respect to the reduction of claims expenses, New PREMERA might enter into more favorable agreements with health care providers, thereby reducing the cost of care (and, therefore, claims expense) without an adverse impact on subscribers, policyholders, and the public. But the obverse is also true, in that reducing the cost of care might have materially adverse effects on subscribers, policyholders, and the public. For example, PREMERA may reduce claims expense by paying fewer claims (*i.e.*, reducing the scope of coverage or “rationing” care more aggressively). Moreover, New PREMERA might seek a reduction in provider compensation agreements, which may not negatively affect subscriber or policyholder premiums, but may cause an exit of providers from the Washington market, thereby reducing the quality or quantity of care. The Business Case implies that, on the contrary, the Transaction will have a moderating effect on pressure to cut provider payment levels. However, no evidence has been provided to support this assertion.

Given the foregoing, analysis of the Proposed Transaction necessarily will require evaluation of the degree to which New PREMERA is likely to be compelled to enhance operating margins. In turn, the analysis will have to encompass how such enhancements can be achieved. To be sure, these issues will come as no surprise to PREMERA. In various presentations to management, Goldman Sachs (“Goldman”) indicated that the value drivers of New PREMERA, as a public company, would include, among other factors, administrative expense ratios, operating margins, net income margins, and medical loss ratios.²²⁶ Moreover, a “spread of premiums over costs is an important driver,” because “health insurance stocks rise when premiums exceed cost trends.”²²⁷ In a Morgan Stanley presentation to PREMERA, Morgan Stanley suggested that one of the supposed benefits of being a public company was that PREMERA will have its “feet to the fire.”²²⁸ PREMERA has acknowledged that the advantages of remaining a nonprofit company are that there are “no shareholders,” and management can “focus on the long term.”²²⁹ On the other hand, PREMERA, as a nonprofit company, need not satisfy shareholder pressures of making short-term profits. Unlike a for-profit corporation, there are no shareholders with the power to remove the

²²⁶ See, e.g., Goldman Presentation to PBC: Regarding Value Drivers, at 0017141 (Oct. 6, 2002) (on file with C&B); Goldman, Presentation to PREMERA: Regarding the IPO Process and Managing a Public Company, at 0024928 (Aug. 9, 2002) (on file with C&B) [BOTH CONFIDENTIAL].

²²⁷ Goldman, PBC: Mock Presentation to Investors, at 0017309 (Oct. 6, 2002) (on file with C&B) [CONFIDENTIAL].

²²⁸ Morgan Stanley, PREMERA, at 0017250 (Oct. 2002) (on file with C&B) [CONFIDENTIAL].

²²⁹ PREMERA, Board Retreat: Capital Planning Options, at 0016917 (Sept. 9, 2001) (on file with C&B) (listing other advantages such as “[p]ublic perception” and “[n]o distraction of conversion”) [CONFIDENTIAL].

board due to unmet profit expectations. Although PREMERA's management has stated that it currently maximizes profit, failure to do so would not result in the removal of the board or management. Nothing puts one's "feet to the fire" more than the threat of the loss of employment, especially employment that provides lucrative compensation.

PwC has analyzed PREMERA's financial results on a historical basis and projected basis, and has compared those results to PREMERA's target financial results. PwC's analysis supports the foregoing discussion regarding shareholder pressures. Prior to delving into PwC's analysis, an explanation of the difference between PREMERA's projected financial results and target financial results is required. Projected financial results, typically, refer to a company's expected financial performance over, generally, a three- to five-year period as provided by management. Target financial results, on the other hand, are typically management's ideal financial results. Projections may be in line with targets, but conversely, projections could be above or below targets. Projections, however, do not necessarily reflect a maximization of profits. Without accurately defined target operating margins, projections do not clearly reflect opportunities to maximize profits. Projections without these clear targets tend to project key variables in the aggregate, rather than appropriately focusing on each individual sub-component of business. In addition, ability to develop strategic initiatives is impaired. Projections could appear conservative or even inconsistent with a company's operational plan to achieve maximum profits. With respect to PREMERA's projections, the latter seems to be the case. Therefore, an analysis of PREMERA's target financial results, is appropriate under the circumstances.

PREMERA's target operating margin for its individual business is approximately [] percent.²³⁰ PwC has determined that PREMERA, historically, has not achieved its target operating margin for its individual business; however, the individual business was relatively profitable in 2000 and near break even over the past two years.²³¹ Regardless, the difference between the historical operating margins of the individual business and target levels still seem to be very significant.²³² PREMERA's targeted operating margin for the small group business is [] percent.²³³ In the small group business of Eastern Washington, PREMERA has experienced losses in its operating margin over the past six years.²³⁴ On the other hand, in Western Washington's small group business,

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²³⁰ PwC Economic Impact Report, *supra* 31, at 56 [CONFIDENTIAL].

²³¹ *Id.* at 57-58 [CONFIDENTIAL].

²³² *Id.* [CONFIDENTIAL].

²³³ *Id.* at 58 [CONFIDENTIAL].

²³⁴ *Id.* at 59 [CONFIDENTIAL].

operating margins for the individual business line have been on target for the past six years.²³⁵ Despite the success of Western Washington, small group business in Washington overall has not met targeted expectations due to the losses in Eastern Washington.²³⁶ PREMERA's target operating margins for large business is [] percent.²³⁷ PREMERA's large group account has ranged between a [] percent loss to a [] percent gain over the past six years.²³⁸ Large group business in Eastern Washington has achieved targeted operating margins for the last two years, but under-performed from 1997-2000.²³⁹

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PwC has developed a model that estimates the level of change in premium and/or provider payments required in order for PREMERA to meet target operating margins and to match profitability of comparable for-profit publicly-traded health insurance companies.²⁴³ The model shows the areas in which PREMERA will be able to affect premiums and costs due to market power.²⁴⁴ The model assumes that PREMERA will not be able to affect premiums and costs by amounts greater than market trends in those areas where PREMERA does not have market power.²⁴⁵ Furthermore, the model takes into account the loss of enrollment due to increased premiums, but as indicated, this loss is less significant in

²³⁵ *Id.* [CONFIDENTIAL].

²³⁶ *Id.* at 60 [CONFIDENTIAL].

²³⁷ *Id.* [CONFIDENTIAL].

²³⁸ *Id.* [CONFIDENTIAL]

²³⁹ *Id.* at 61 [CONFIDENTIAL].

²⁴⁰ *Id.* at 66 [CONFIDENTIAL].

²⁴¹ *Id.* [CONFIDENTIAL].

²⁴² *Id.* at 67 [CONFIDENTIAL].

²⁴³ *Id.* at 87 [CONFIDENTIAL].

²⁴⁴ *Id.* at 89 [CONFIDENTIAL].

²⁴⁵ *Id.* [CONFIDENTIAL].

counties where PREMERA has market power.²⁴⁶ That is, the lack of competition limits the ability for members to switch insurers, although some members may drop coverage altogether.²⁴⁷ Although PREMERA will be below target for each of its lines of business, PREMERA's market power will primarily affect the individual and regulated small group business because members of the small/mid-size group business and large group business typically have greater bargaining power and alternative options such as self-insurance.

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²⁴⁹ This results in premium rates of over \$300 per person per month for members in these lines of business by 2007.²⁵⁰

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The total number of members in the individual and small group markets would be between 97,000 to 98,000, or approximately 17 percent of projected enrollment.²⁵³

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²⁴⁶ *Id.* at 90 (describing the use of the measure known as "elasticity" to determine the number of members who switch insurers or drop coverage) [CONFIDENTIAL].

²⁴⁷ *Id.* at 89 [CONFIDENTIAL].

²⁴⁸ *Id.* at 92 [CONFIDENTIAL].

²⁴⁹ *Id.* [CONFIDENTIAL].

²⁵⁰ *Id.* [CONFIDENTIAL].

²⁵¹ *Id.* at 97 [CONFIDENTIAL].

²⁵² *Id.* [CONFIDENTIAL].

²⁵³ *Id.* [CONFIDENTIAL].

²⁵⁴ *Id.* [CONFIDENTIAL].

Moreover, if PREMERA were to experience "a material change in structure" for purposes of I.R.C. 833(b), then the higher effective corporate tax rate of 35 percent would require additional increases to offset the lower post-tax operating gain.²⁵⁶ A discussion of the potential tax implications can be found *supra* at section III.D.1.

PREMERA may argue that its projections and targets were developed irrespective of PREMERA's corporate structure. But, as has been described above, as a nonprofit company, if PREMERA falls short of investor expectations, there is no shareholder pressure compelling management to achieve those expectations. In the past, although PREMERA has improved its profitability, it still has fallen short of target expectations. Yet, rather than trying to take advantage of certain markets, such as Eastern Washington, where there is less price (premium) competition, or where it could potentially raise premiums above competitive levels due to market power, PREMERA has maintained the status quo. Presumably, with shareholder pressure for increased returns or achievement of certain targets, combined with stock options tied to New PREMERA's share price, management will probably not sit idly by and forego these opportunities in the future. As the Supreme Court of Kansas analogized with respect to the Kansas BCBS conversion, "the Commissioner is not required to wait until likely future harm to the public appears before locking the barn door; she may do so now as a preventative."²⁵⁷ On this basis, the Commissioner has sufficient evidence on the record to disapprove the Proposed Transaction.

(2) Effect on the Uninsured and Underinsured

Related to the accessibility, affordability, and availability of insurance are the issues of whether the Proposed Transaction will have an effect upon the extent to which the disadvantaged, the uninsured, and the underinsured, will have access to health insurance, and whether benefits will be provided to promote improved health in the affected community.²⁵⁸ Arguably, PREMERA has no independent obligation to assure the adequacy of available coverages for these impaired populations. But, to the extent that the Proposed Transaction may have an adverse effect on such availability, it is important to ascertain whether the Transaction will produce salutary balancing effects. This involves a determination of whether PREMERA's offering of products designed to appeal to the uninsured and underinsured, together with the activities that can reasonably be expected from the consideration to be realized by the Foundation Shareholder, can adequately make health insurance accessible to Washington's most vulnerable citizens.

²⁵⁵ *Id.* at 98 [CONFIDENTIAL].

²⁵⁶ *Id.* at 123 [CONFIDENTIAL].

²⁵⁷ *Blue Cross and Blue Shield of Kan., Inc.*, 2003 Kan. LEXIS 481, at *58.

²⁵⁸ *Cf.* RCW 70.45.080(4) (requiring the acquirer be "committed to providing health care to the disadvantaged, the uninsured, and the underinsured and to provid[e] benefits to promote improved health in the affected community" before the department of health will approve the sale of a nonprofit hospital).

As shown by PwC, PREMERA will have the ability to increase premiums to achieve target returns. Assuming that PREMERA does indeed raise premiums due to shareholder pressures, PwC's model also shows that certain members will most probably be compelled to drop coverage or new enrollment may decline. These consequences as a result of the Proposed Transaction may cause an increase in the uninsured population or reduce access to health insurance in the communities where PREMERA has market power. The Commissioner, therefore, has sufficient evidence on the record to disapprove the Proposed Transaction on this basis.

Conversely, in areas such as rural Eastern Washington where PREMERA is functionally a single player, a particular concern is whether New PREMERA may leave the market if it cannot realize a sufficient return on investment. PREMERA asserts that it currently bases its business decisions on the profitability of various markets, and not on other intangible nonprofit motives.

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Historically, PREMERA has not fully exited unprofitable markets, though it may have reduced its writings in some cases. With the need to respond to investor expectations, PREMERA may feel compelled to discontinue unprofitable lines of business quickly and fully. The Commissioner may consider this as an additional factor in deciding whether to approve the Proposed Transaction.

d. PREMERA's Arguments in Favor of the Proposed Transaction

As discussed *supra* at section III.D.2.a, the Commissioner may elect to balance the negative consequences expected to be produced by the Transaction against its anticipated positive effects. PREMERA's primary argument in favor of the Proposed Transaction is that it will generate additional capital and thereby increase its RBC ratio. An insurer's RBC ratio, generally, is an indication of the insurer's financial stability and ability to pay future claims, and is expressed as a percentage of a company's "Authorized Control Level" ("ACL"). In Washington, as in most states, certain levels of RBC result in adverse regulatory consequences. An RBC ratio of 200 percent of ACL is referred to as the "company action level," which is the minimum level at which there are no regulatory consequences. This level is commonly viewed as a company's minimum required RBC ratio, though many regulators far prefer somewhat higher levels of surplus. Typically, the severity

²⁵⁹ Even if cross-subsidization is impermissible in the context of utilities rates, the concept is inapplicable in the context of insurance rates. *Blue Cross & Blue Shield of Mich. v. Baerwaldt*, 361 N.W.2d 742, 748 (Mich. Ct. App. 1984) (criticizing *Blue Cross of Kan., Inc. v. Bell*, 607 P.2d 498 (Kan. 1980), which indicates the contrary). The principle that each class of customers must pay its own way, and that cross-subsidization of classes is unfair and unreasonable, is drawn from public utility cases, where most rates are based upon what a customer uses, no element of risk-sharing is involved, and it is easy to conclude that subsidies between classes of customers are unfair. *Baerwaldt*, 361 N.W.2d at 748. The situation is different in the business of insurance, which "necessarily involves a far more imperfect assessment of the cost of benefits provided." *Id.* Even if the proposition in *Bell* is valid in Washington, the Supreme Court of Kansas has distinguished the factual situation in its decision in *Bell* from a situation involving an acquisition. *Blue Cross and Blue Shield of Kan., Inc.*, 2003 Kan. LEXIS 481, at *41.

of regulatory action increases as the ratio declines, with such action becoming mandatory when the ratio falls to 70 percent of ACL. An insurer's RBC ratio may be impacted by various events such as increased growth or a reduction in profitability. Increased growth can affect the RBC ratio adversely because additional surplus is required to support the additional policies underwritten. On the other hand, decreased profitability will decrease the amount of internally generated capital to support risk-based policies, and negative profitability may cause a depletion of surplus to fund operating needs. As a practical matter, an insurer with an RBC ratio of approximately 200 percent of ACL faces significant risk that these or similar events may cause its RBC ratio to fall below the 200 percent level resulting in regulatory consequences. Conversely, an insurer with a significantly higher RBC ratio will be less concerned with these events because of the lower likelihood that its RBC ratio will fall below the 200 percent level.

The Business Case indicates that "continued membership increases will continue to put downward pressure on the RBC level."²⁶⁰ However, the Business Case also states that the company's RBC ratio "continues to remain in the 400 percent range," which is more than twice the company action level, and four times the authorized control level, even though, "[s]ince 1999, PREMERA has experienced significant growth of over 260,000 members."²⁶¹ PREMERA has been able to maintain twice the required statutory surplus level because, "[s]ince 1998, [PREMERA]'s statutory capital position has increased by nearly \$120 million as a result of operating income contributions to capital."²⁶² Despite PREMERA's significant growth over the last three years, achieved with an operating margin of between 0.7 percent to 1.1 percent, PREMERA suggests that the growth was difficult due to the lack of surplus capital.²⁶³ PREMERA asserts, without citing any specific criteria or providing documentation, that "the BCBSA requires Blue plans to maintain reserves in excess of state requirements in order to maintain their Blue license."²⁶⁴ There does not appear to be any basis for this assertion. Washington statutes require an insurer to maintain reserves of at least twice the authorized control level.²⁶⁵

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²⁶⁰ Business Case, Form A: Exhibit E-7 *supra* note 4, at 24.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.* at 27.

²⁶⁴ *Id.* at 26.

²⁶⁵ RCW 48.05.430(II)(a).

²⁶⁶ [CONFIDENTIAL].

] at 0020547 (Dec. 12, 2002) (on file with C&B) [hereinafter [

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²⁶⁷ Conversion Messages - The Basics, at 0035659 (May 2003) (on file with C&B) [CONFIDENTIAL].

²⁶⁸ BCBSA RBC Levels, *supra* note 266, at 0020547 [CONFIDENTIAL].

²⁶⁹ Capital Uses, *supra* note 225, at 0035342 [CONFIDENTIAL].

²⁷⁰ *Id.* [CONFIDENTIAL].

²⁷¹ *Id.* [CONFIDENTIAL].

²⁷² PBC, Materials Prepared for the Board of Directors: Business Case Review, at 0016855 (May 14, 2002) (on file with C&B) [CONFIDENTIAL].

²⁷³ Capital Uses, *supra* note 225, at 0035343 [CONFIDENTIAL].

Furthermore, there are no regulatory consequences for having an RBC ratio of less than 375 percent but more than 200 percent.²⁷⁶ Clearly, when considering whether the Transaction is in the public interest, the Commissioner would be justified in not giving significant weight to PREMERA's implication that an increased RBC ratio for PREMERA *is required*, or will be significantly beneficial for PREMERA.

Assuming *arguendo* that additional capital is needed, the question remains as to whether those needs can be satisfied by some other alternative. If additional capital to meet PREMERA's supposed needs reasonably can be acquired through some other mechanism, then it follows that less weight should be given to PREMERA's implication that it needs to become a for-profit company in order to access additional capital. Blackstone notes that there were alternatives that could have satisfied PREMERA's alleged capital requirements.²⁷⁷ These same alternatives have been considered by PREMERA as discussed *infra* at section III.D.2.e. Furthermore, other factors may be driving management's decisions, such as the "momentum of Blues conversions"²⁷⁸ and "political matters,"²⁷⁹ as opposed to substantive business needs. That is, management may be attempting to convert merely because of a concern that BCBS conversions may not be as prevalent in the future – thus, perhaps making the conversion process more difficult. As evidenced by the recent wave of proposed BCBS conversions that have failed such as in Maryland, Kansas, North Carolina, and New Jersey, PREMERA's management may already be too late to take advantage of the "momentum of Blues conversions." Again, the Commissioner would be justified in giving less weight to PREMERA's stated reasons for the Transaction due to these factors.

Additionally, PREMERA still has not been able to articulate specifically the technological expenditures it requires, although it suggests that the additional capital will be used for such

²⁷⁴ PBC, Board Meeting: PREMERA RBC, at 0017489 (May 9, 2001) (on file with C&B) [CONFIDENTIAL].

²⁷⁵ *Id.* at 0017491 [CONFIDENTIAL].

²⁷⁶ PwC Accounting Report, *supra* 30, at 58 [CONFIDENTIAL].

²⁷⁷ Blackstone Valuation and Fairness Report, *supra* note 35, at 7 [CONFIDENTIAL].

²⁷⁸ PREMERA, Board Retreat: Capital Planning Options, at 0016922 (Sept. 9, 2001) (on file with C&B); PBC, Officer Meeting, at 0017023 (May 28, 2002) (on file with C&B) [BOTH CONFIDENTIAL].

²⁷⁹ *Id.* [CONFIDENTIAL].

expenditures, presumably to reduce SG&A expenses.²⁸⁰ The Business Case asserts that in order to maintain statutory and BCBSA-required RBC levels while making capital investments (e.g., for technology improvements, product development, and regulatory compliance), PREMERA needs access to capital. But, PREMERA's Business Case invokes a non-PREMERA specific survey conducted by Accenture, a consulting firm. Management has acknowledged that the Accenture study was not used to estimate future capital needs or to specifically analyze PREMERA's capital needs; rather, the study was used to support PREMERA's internal projections of its technological spending needs. The study estimates that "the amount of expenditures needed by the *average health plan* with revenues over \$500 million *could be* between \$90 million and \$190 million over the next three to five years, excluding capital spent for acquisition activity,"²⁸¹ and that such a health plan "could spend between \$30 million to \$60 million to become fully compliant with HIPAA guidelines."²⁸² The question remains as to whether PREMERA is an average, below average, or above average health plan. While the "average health plan," with revenues over \$500 million, "could" have capital requirements of \$120 million to \$250 million over the next three to five years, the question at hand is what PREMERA's capital requirements are reasonably likely to be over that period. Overall, PREMERA projects capital requirements of approximately \$120 million over the next five years, which can be satisfied with internally-generated capital.²⁸³ Therefore, this reason is not necessarily one to which significant weight should be given.

In sum, a reasonably compelling business necessity for PREMERA to convert in order to access the equity markets does not seem apparent. Of course, the Transaction should not be disapproved merely because it has not been shown to be necessary for PREMERA's survival. However, assuming the Commissioner finds that the Transaction produces negative effects to subscribers, policyholders, providers, or the public, then the Transaction should be disapproved, unless PREMERA demonstrates other countervailing positive effects.

In addition to its arguments that the Transaction will benefit the company, PREMERA also suggests that the Foundation Shareholder will provide benefits to offset any negative effects of the Transaction. Typically, an applicant in these types of conversions makes the argument that the establishment of a foundation will provide health care benefits to the public which will offset any negative effects on the public caused by the conversion. However, rarely does the applicant provide evidence that the benefits of a foundation will address the specific negative effects produced by the

²⁸⁰ Plan of Conversion of PREMERA, PBC, and LifeWise of Washington, Form A: Exhibit A-4, art. II, at 5 (September 26, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitA-4.pdf> [hereinafter "Plan of Conversion, Form A: Exhibit A-4"].

²⁸¹ Business Case, Form A: Exhibit E-7, *supra* note 4, at 20. (By its own admission, PREMERA does not need to expend any capital for acquisition activity, because "PREMERA is not actively pursuing a growth by acquisition strategy.").

²⁸² *Id.* at 25 (emphasis added).

²⁸³ Blackstone Valuation and Fairness Report, *supra* note 35, at 19 [CONFIDENTIAL].

conversion, or whether those benefits are sufficient in size to counter those effects.²⁸⁴ With respect to the Proposed Transaction, PREMERA has not demonstrated that the purposes and benefits of the Foundation Shareholder and Charitable Organizations will offset such negative effects. The Commissioner, therefore, should not give significant weight to PREMERA's implication that the purported benefits of the Foundation Shareholder and the Charitable Organizations will offset the negative impact of the conversion.

e. Due Diligence

As discussed *supra* at section III.C.2, the public interest also requires that the Transaction be permissible under the Washington Nonprofit Corporation Act, as well as other laws governing nonprofit entities, trusts, or charities.²⁸⁵ To determine whether the Transaction is unfair and unreasonable to subscribers or policyholders, and not in the public interest, the Commissioner must determine whether PREMERA's Board of Directors exercised due diligence in authorizing the conversion and the proposed terms and conditions thereof.²⁸⁶ Under the Washington Nonprofit Corporation Act, both a miscellaneous nonprofit corporation's director, and an officer with discretionary authority, must perform their duties as follows: (a) in good faith, (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (c) in a manner the director reasonably believes to be in the best interests of the corporation.²⁸⁷ Closely related to the issue of due diligence is PREMERA's use of appropriate procedures in arriving at the decision to approve the Transaction. The officers and directors must have been sufficiently informed about the proposed conversion and possible alternatives, and they must have used appropriate expert assistance.²⁸⁸

PREMERA seeks sources other than operating income to augment its existing capital. According to the Business Case, debt financing has limited cash-raising potential due to regulations

²⁸⁴ Cf. LECG LLC, Maryland Insurance Administration, Foundation Analysis, at iv (Feb. 11, 2003) available at <http://www.mdinsurance.state.md.us/documents/LECGFinalReport2-11-03.pdf> (indicating that the study was unable to prove a causative relationship between the grants made by foundations in previous conversions to the need of addressing health care concerns in those states where the foundation operated).

²⁸⁵ Cf. RCW 70.45.070(1) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved unless it complies with RCW Chapter 24.03 and other applicable statutes).

²⁸⁶ Cf. RCW 70.45.070(2) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved unless the nonprofit corporation that owns the hospital being acquired "has exercised due diligence in authorizing the acquisition, selecting the acquiring person, and negotiating the terms and conditions of the acquisition").

²⁸⁷ RCW 24.06.153(1).

²⁸⁸ Cf. RCW 70.45.070(3) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved unless "[t]he procedures used by the nonprofit corporation's board of trustees and officers in making its decision fulfilled their fiduciary duties, that the board and officers were sufficiently informed about the proposed acquisition and possible alternatives, and that they used appropriate expert assistance").

limiting the amount of capital that could be raised in that manner, as well as higher interest rates charged due to the requirement that surplus notes be subordinated to the claims of other creditors. The Business Case rejects mergers or alliances with, or acquisition by, better-capitalized companies as being inconsistent with PREMERA's "commitment to remain a local, independent health plan."²⁸⁹ The Business Case characterizes a potential sale of assets as impracticable because "the amount of capital that could be generated by a sale of assets would most likely be insignificant when considering the opportunity cost of lost growth and market position."²⁹⁰ Therefore, according to the Business Case, the option that would best meet the company's goals would be to access the equity capital markets by converting to for-profit status, while remaining an independent Washington-based company.²⁹¹

The Commissioner should review management's decision-making process, in order to determine whether the board satisfied its due diligence obligations in deciding that PREMERA should access the public equity markets. But, perhaps even more important than PREMERA's due diligence obligations, PREMERA's analysis may identify alternatives to raising capital that detracted from the weight to be given to PREMERA's assertion that the IPO is the best method to achieve its goals. PREMERA's board engaged Goldman to provide an analysis of various methods to raise capital. In 2001, Goldman presented to the board an overview of the potential benefits and disadvantages of seven varied strategic alternatives that did not necessarily require a conversion, such as internal growth/profits, surplus notes, sale of operating units, sale of fixed assets, third-party investment-debt, partial IPO or reverse merger, and merger/alliance with a not-for-profit company.²⁹²

First, Goldman presented the potential benefits and disadvantages of the "Status Quo – Internal Growth/Profits."²⁹³ Those benefits included the following: no external action requirement, lack of management distractions, and continued autonomy. The potential disadvantages were downturn in results-limited financial cushion, lack of flexibility for additional growth, and vulnerability to escalating competitive pressures (local competition has stronger balance sheet with which to take advantage of opportunities).

Second, Goldman presented the potential benefits and disadvantages of surplus notes.²⁹⁴ Those benefits were as follows: low cost surplus, enhanced RBC, tax efficiency, and increased

²⁸⁹ Business Case, Form A: Exhibit E-7, *supra* note 4, at 30.

²⁹⁰ *Id.* at 29.

²⁹¹ *Id.* at 33.

²⁹² Goldman, The Company: Presentation to the Board of Directors, at 0017704-05 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

²⁹³ *Id.* at 0017709 [CONFIDENTIAL].

²⁹⁴ *Id.* at 0017713 [CONFIDENTIAL].

flexibility in the current business plan. The only disadvantages were as follows: surplus notes could not account for more than 10 to 20 percent of surplus and were available only for investment grade companies. Goldman estimated that PREMERA's surplus note would be rated BB+/Ba1,²⁹⁵ which is below investment grade.

Third, Goldman presented the potential benefits and disadvantages of the sale of the operating units.²⁹⁶ Those benefits were as follows: quick access to cash, reduce current capital requirements or enhance RBC, and maintain flexibility for future capital raising. The potential disadvantages were as follows: existence of sizeable, salable business, a sacrificed size/growth, and a decreased base for spreading costs. Goldman also presented the feasibility of the sale of operating units.²⁹⁷

Fourth, Goldman presented the potential benefits and disadvantages of the sale of fixed assets.²⁹⁸ Those benefits included the following: quick access to cash, and retention of future strategic flexibility. The potential disadvantages were that this option did not enhance RBC, and annual lease payments would decrease operating results.

Fifth, Goldman presented an analysis of third-party investment debt.²⁹⁹ Goldman explained that third-party investment debt allowed PREMERA to remain as a not-for-profit, but "[t]he debt would be similar to a high yield bond with an initial interest of approximately 12 percent."³⁰⁰ Moreover, this debt would be funded by mezzanine investors, who typically require returns of 20 to 25 percent – thus, additional economic value would be necessary.³⁰¹ This value would be in the form of either equity warrants in the event of a conversion or increasing interest rates on the debts, if a conversion is not completed within a specified period of time.³⁰² Goldman presented the

²⁹⁵ *Id.* at 0017712 [CONFIDENTIAL].

²⁹⁶ *Id.* at 0017715 [CONFIDENTIAL].

²⁹⁷ Goldman, PREMERA: Discussion Materials, at 0017754 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

²⁹⁸ Goldman, The Company: Presentation to the Board of Directors, at 0017718 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

²⁹⁹ *Id.* at 0017720 [CONFIDENTIAL].

³⁰⁰ *Id.* [CONFIDENTIAL].

³⁰¹ *Id.* [CONFIDENTIAL].

³⁰² *Id.* [CONFIDENTIAL].

potential benefits and disadvantages of the sale of third-party investment debt.³⁰³ This option would increase core capital, enable growth, and provide a longer-term fix. The potential disadvantages were the degree of investor involvement/control, a regulator-approval requirement to qualify as RBC, an investor requirement of high return on capital, and a limit that not more than 10 to 20 percent of surplus could be raised.

Sixth, Goldman presented to the board an analysis of a partial IPO and a reverse merger.³⁰⁴ In a partial IPO, PREMERA, which remains a nonprofit, would sell a minority interest in a for-profit subsidiary to public investors, while retaining the majority interest.³⁰⁵ In a reverse merger, PREMERA, while remaining a nonprofit, would merge a for-profit subsidiary into a smaller, publicly-traded company and receive an interest in the new company.³⁰⁶ The potential benefits of either of these options included access to growth and financing capital (a less cumbersome solution than full conversion), the creation of acquisition currency, and an enhanced RBC. The potential disadvantages included the size/availability of business to separate, availability/interest of potential partners, limited amounts of funds raised, regulatory review, and public scrutiny.³⁰⁷

Seventh, Goldman presented to the board an analysis of a merger and an alliance.³⁰⁸ The potential benefits of either of these options were as follows: a contiguous Blue relationship enhancing operational efficiencies, opportunity to leverage the Business & Systems Transformation ("B&ST") project in the case of an acquisition or merger, and improved ability to become a consolidator. The potential disadvantages were as follows: loss of autonomy/control, timing problems, regulatory/association scrutiny/approvals, relative strength of capital base, constraints on asset transfers, and a potentially limited B&ST project in the case of merger or sale.³⁰⁹

Clearly, PREMERA had several methods by which to raise capital, albeit, not necessarily alternatives that could raise capital of \$100 million to \$150 million. However, because PREMERA has acknowledged that the capital may be necessary at most for future unexpected events, there is no reason why it could not raise the amount required at the time the unexpected event occurred. Moreover, some of these alternatives were rejected on the basis of criteria the merit of which is far from established. For example, PREMERA's insistence on retaining independence and local control

³⁰³ *Id.* [CONFIDENTIAL].

³⁰⁴ *Id.* at 0017722 [CONFIDENTIAL].

³⁰⁵ *Id.* [CONFIDENTIAL].

³⁰⁶ *Id.* [CONFIDENTIAL].

³⁰⁷ *Id.* [CONFIDENTIAL].

³⁰⁸ *Id.* at 0017724 [CONFIDENTIAL].

³⁰⁹ *Id.* [CONFIDENTIAL].

may well inure to the benefit of management, but there has been no demonstration that it serves the interests of policyholders, insureds, and the public.

Generally, Goldman asserted that the non-conversion strategic alternatives could generate potentially the following additional statutory capital: (1) the status quo would generate approximately \$40 million, (2) surplus notes would not generate any capital, (3) a sale of the operating units would generate between \$1 million to \$150 million, (4) a sale of fixed assets would not generate any capital, (5) third-party investment debt would generate \$60 million, (6) a partial IPO or reverse merger would generate \$50 million (but this is actually unknown), and (7) a merger/alliance would generate an unknown dollar amount.³¹⁰

In addition to the foregoing non-conversion strategic alternatives, Goldman presented various alternatives that required conversion, such as: third-party investment-private equity, partial IPO and reverse merger, IPO, and merger/alliance.

First, the two types of third-party investors are private equity investors and mezzanine investors.³¹¹ Private equity investors would require targeted returns of 30 to 35 percent through a conversion and subsequent IPO, or a buyout of their interest at a fixed price.³¹² Mezzanine investors, as described earlier in this section, would not require a conversion; but without a conversion, there would be an increased coupon rate.³¹³ The potential benefits of third-party investment-private equity were that this option would raise core capital and enable growth, providing a long-term fix, along with bridge-financing between conversion and IPO. The potential disadvantages were the cost of financing, investor involvement/control, the need for regulatory approval, the likelihood of public scrutiny, and investors' expectation of a high return on capital.³¹⁴

Second, Goldman provided a description of a partial IPO and a reverse merger in a conversion context, much the same as described earlier in this section.³¹⁵

³¹⁰ Goldman, PREMERA: Discussion Materials, at 0017753 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

³¹¹ Goldman, The Company: Presentation to the Board of Directors, at 0017729 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

³¹² *Id.* [CONFIDENTIAL].

³¹³ *Id.* [CONFIDENTIAL].

³¹⁴ *Id.* at 0017730 [CONFIDENTIAL].

³¹⁵ *See id.* at 0017734 (listing the potential benefits and considerations of a partial IPO or reverse merger) [CONFIDENTIAL].

Third, PREMERA could convert and then conduct an IPO.³¹⁶ In the Goldman presentation, this option could be completed under the following scenarios: (1) conversion and simultaneous IPO, (2) conversion and subsequent IPO, (3) conversion to mutual company and subsequent demutualization, and (4) conversion to for-profit with interim third-party investment and subsequent IPO.³¹⁷ The potential benefits of an IPO were that this option would allow for a flexible capital structure, create an acquisition currency, enhance RBC, enhance ability to recruit and retain employees/management, and strengthen the position with rating agencies. The potential disadvantages would be the time and complexity involved, management distraction, transfer of value, exposure to a PREMERA takeover by a larger public company, intense public scrutiny, an intense regulatory approval process, and the additional burden of running a public company.³¹⁸ In conducting an analysis of an IPO, management requested that the following questions, which were asked at an August 2001 board meeting, be answered: (1) what are the financial characteristics of public companies; (2) how does PREMERA compare to publicly-traded BCBS plans; (3) how would a PREMERA IPO compare to other Blue IPOs; and (4) what does PREMERA's valuation look like?³¹⁹

Fourth, Goldman considered scenarios in which PREMERA would convert to a for-profit company and merge with a publicly-traded company. The potential benefits of either of these options included the potential to enhance the balance sheet, a contiguous Blue relationship enhancing operational efficiencies, opportunity to leverage the B&ST project in the case of an acquisition or merger, and an improved ability to become a consolidator. The potential disadvantages include the following: loss of autonomy/control; both timing and regulatory/association scrutiny/approval problems; and a potentially limited B&ST project in the case of merger or sale.³²⁰

Goldman presented various acquisition targets and various sale/merger targets that PREMERA could consider.³²¹ However, no analysis was conducted either as to the consideration that an acquirer might pay, nor as to a merger's effect on PREMERA's RBC. Moreover, the merger option was dismissed primarily because the potential loss of independence and local presence would

³¹⁶ *Id.* at 0017736 [CONFIDENTIAL].

³¹⁷ *Id.* [CONFIDENTIAL].

³¹⁸ *Id.* [CONFIDENTIAL].

³¹⁹ Goldman, PREMERA: Discussion Materials, at 0017747 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

³²⁰ Goldman, The Company: Presentation to the Board of Directors, at 0017738 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

³²¹ Goldman, PREMERA: Discussion Materials, at 0017755 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

affect the company negatively.³²² "The Board of Directors has determined that [PREMERA's] mission and vision can be best achieved as an independent, Washington-based company."³²³ "This relationship-driven approach is enhanced by being an independent, local company."³²⁴ "[W]here most prospective merger and affiliation partners are out-of-state entities, [merger or affiliation] would likely . . . result in a loss of [autonomy and] local focus."³²⁵ And again:

Regardless of the availability of merger candidates, the primary reason against a merger is its inconsistency with the future independence of [PREMERA]. [PREMERA] has consistently affirmed its intent to remain an independent, locally controlled plan in order to fulfill its mission for its customers and achieve its vision in the marketplace. Mergers and affiliations, which lead to a loss of autonomy, are inconsistent with [PREMERA]'s objectives.³²⁶

However, there is language in the Business Case which would appear to leave the door open for PREMERA to argue in the future that its affiliation with, or acquisition by, a larger for-profit Blue plan would be in the public interest. At present, the Business Case states:

Furthermore, [PREMERA] believes it can best serve its customers and their interests by remaining an independent, locally managed plan. As [PREMERA] considered its capital alternatives, it categorically rejected mergers or affiliations which jeopardize local autonomy and in turn, jeopardize the plan's ability to properly respond to local market needs and expectations.³²⁷

Presumably, PREMERA would not reject an acquisition structured so as not to "jeopardize the plan's ability to properly respond to local market needs and expectations."³²⁸ Perhaps coincidentally, PREMERA, while proclaiming the virtue of remaining a local, independent insurer, seems to reserve the ability to argue in the future that the company needs to achieve scale through merger or acquisition with a large BCBS plan and could do so without sacrificing responsiveness to local policyholders and providers. For example, the Business Case notes that PREMERA's "sales, provider contracting, care facilitation and customer service functions are housed locally,"

³²² Business Case, Form A: Exhibit E-7, *supra* note 4, at 30-31.

³²³ *Id.* at 11.

³²⁴ *Id.* at 12.

³²⁵ *Id.* at 30.

³²⁶ *Id.* at 31.

³²⁷ *Id.* at 36.

³²⁸ *Id.*

whereas “[o]ther services that favor consistency and continuity (rate setting, information processing and claims payment, for example) are carried out in centralized groups.”³²⁹ This type of local sales/provider contracting/customer service, combined with centralized underwriting/information processing/claims payment, is typical after a small BCBS plan’s affiliation with, or acquisition by, a larger BCBS plan. Indeed, the economies of scale that are promised by such synergistic arrangements are often one of the two principal arguments advanced in favor of merger or acquisition. Using similar logic, the Business Case notes that “it is important that [PREMERA] continues its growth in membership to realize opportunities for economies of scale, allowing the company to spread investment costs over a larger base of customers.”³³⁰ [

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Also typical of multistate BCBS plan mergers/acquisitions is the establishment of local policyholder and provider advisory boards in order to address concerns about diminished local influence over decisions made by the management of a multistate company.

Furthermore, PREMERA’s arguments in favor of the Proposed Transaction mirror those in favor of past sponsored conversions/acquisitions of BCBS plans such as the need for access to capital, and cost efficiencies and other advantages said to result from increased scale. The Business Case notes the need for “a growing revenue and membership base,”³³³ which of course is one of the benefits of scale typically promised as the result of proposed mergers/acquisitions. PREMERA “believes that opportunities for growth continue to exist in its current markets, as well as in markets that [PREMERA] does not currently operate.”³³⁴ PREMERA, which seeks permission for a conversion only, and professes to have no plans to seek to be acquired, may in the future argue that in order to compete with larger, national, for-profit health insurers, PREMERA must achieve scale through merger or acquisition.³³⁵ In fact, a typical sub-argument of the scale rationale for BCBS plan mergers/acquisitions is that the would-be acquired BCBS plan cannot achieve scale rapidly

³²⁹ *Id.* at 13.

³³⁰ *Id.* at 23.

³³¹ PBC, The Market Environment: Prepared for the Board of Directors, at 0017674 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

³³² Goldman, PBC: Mock Presentation to Investors, at 0017308 (Oct. 6, 2002) (on file with C&B) [CONFIDENTIAL].

³³³ Business Case, Form A: Exhibit E-7, *supra* note 4, at 4.

³³⁴ *Id.* at 25.

³³⁵ See *id.* at 29 (stating that “[m]any [BCBS] plans have pursued mergers as a means to improve their financial and competitive positions”).

enough through organic growth to compete with large, national companies such as Aetna or United, and must, therefore, achieve scale through merging with, or being acquired by, another BCBS plan. The Business Case notes: "While [PREMERA] is not actively pursuing a growth by acquisition strategy, it carefully considers acquisition opportunities as they are presented."³³⁶ Presumably, "acquisition strategy" and "acquisition opportunities" would include being acquired, as well as acquiring. Thus, the door seems open for PREMERA to argue in the future that being acquired would not be against the interest of policyholders and the public if local influence were preserved. There does not appear to be any analysis on whether the board adequately considered the option of a merger with a partner that would allow PREMERA to maintain a local presence, while at the same time adequately funding PREMERA's capital needs (e.g., WellPoint's strategy). [

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] Notwithstanding the foregoing, it is not necessary for the current proceeding that the Commissioner be informed, or even speculate, about whether New PREMERA will ever propose to be acquired. Indeed, the Commissioner need not conclude that the Proposed Transaction is the best option available in order to approve the application. Rather, the Commissioner must determine whether the Proposed Transaction is in the interest of policyholders and the public. In this determination, the outright rejection of the possibility of a merger as a means of raising capital, may cause several potential problems. First, PREMERA's arguments in favor of becoming for-profit are less persuasive. Second, the board may not have met its due diligence duties. Third, PREMERA may have forever foregone the Foundation Shareholder's opportunity to receive a control premium.

PROPRIETARY MATERIAL REDACTED

PREMERA may not have satisfied its due diligence obligations in authorizing the Transaction, because it did not explore adequately the possibility of a merger (or other alternatives) to raise the desired capital. Its deliberations were limited by the arbitrary imposition of artificial

³³⁶ *Id.* at 23.

³³⁷ See letter from H.R. Brereton "Gubby" Barlow, President and CEO, PREMERA, to Mike Demarr, Partner, Deloitte Consulting, at 0032147 (November 5, 2002) (on file with C&B) [CONFIDENTIAL]. C&B would like to note that Regence approached PREMERA after the decision to convert was made. In addition, in 1997, discussions between Regence and PREMERA regarding a possible affiliation between the companies did not consummate.

³³⁸ Goldman, PREMERA: Discussion Materials, at 0017753 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

limitations (*i.e.*, preservation of "local control") that effectively barred full analysis of what might have proven to be better alternatives. Moreover, it is possible that PREMERA could have postponed efforts to raise capital until its need was more fully developed and articulable. Additionally, PREMERA and its experts did not explore the amount of capital that could be generated through merger/sale with potential partners that might have enabled PREMERA to pursue one of its core objectives of having a local presence. Rather, management seems to have assumed, without conducting reasonable due diligence, that no such merger/sale candidate existed. By themselves, these weaknesses in PREMERA's due diligence may not compel rejection of the Proposed Transaction. However, they are an additional significant factor the Commissioner may consider in evaluating whether the Proposed Transaction is in the interest of policyholders and the public. Conflicts of Interest

The public interest also precludes the Commissioner from approving the Transaction unless he determines that no conflicts of interest exist related to the Transaction, including, but not limited to, conflicts of interest related to members of the Board of Directors of, officers of, or experts retained by PREMERA.³³⁹ These conflicts are discussed *infra* at section IV.A, as part of Stage Two of the Engagement.

f. Fair Market Value

Apart from the concerns already discussed, the public interest requires that the Foundation Shareholder receive PREMERA's fair market value, and that the Foundation Shareholder's ability to realize that fair market value in cash not be placed at unreasonable risk by the manner in which the Transaction is structured.³⁴⁰ The transfer of fair market value, as opposed to some other valuation standard, has been recognized implicitly by PREMERA for a number of reasons. PREMERA has stated throughout this process that although it does not consider itself a charitable organization,

practically speaking this doesn't matter[, because they] are nevertheless proposing to grant all the initial stock in the new company – in other words, the entire value at

³³⁹ *Cf.* RCW 70.45.070(4) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved unless "[n]o conflict of interest exists related to the acquisition, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the nonprofit corporation, acquiring person, or other parties to the acquisition").

³⁴⁰ *See supra* note 140 and accompanying text (discussing the impact of RCW 24.03.225(3) on the public's interest that the assets of the sale not only be transferred to PREMERA on condition that they will be safeguarded for charitable purposes, but also that they be transferred to the Foundation Shareholder upon PREMERA's dissolution); *cf.* RCW 70.45.070(5), (6) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved unless "[t]he nonprofit corporation will receive fair market value for its assets" and "[c]haritable funds will not be placed at unreasonable risk, if the acquisition is financed in part by the nonprofit corporation").

the time of the conversion – to a foundation that can sell that stock over time to fund health initiatives in Washington and Alaska.³⁴¹

However, the “entire value” clearly would not be transferred if the Foundation Shareholder received less than PREMERA’s fair market value. In that case, only a portion of the “entire value” will have been transferred. Assuming *arguendo* that the transfer of the “entire value” does not necessarily equate to the transfer of fair market value, PREMERA implies that fair market value would be the standard by which to determine whether PREMERA’s value has been transferred to the Foundation Shareholder if PREMERA were indeed a charitable corporation. PREMERA’s assertions that it is not a charitable corporation seem contrary to the actions taken by PREMERA’s directors and management. The question arises as to why PREMERA would entertain the notion that PREMERA’s value, fair market or otherwise, should be transferred to another entity. If PREMERA is a charitable organization, then this conveyance is understandable. If PREMERA is not a charitable organization, then this conveyance is not only puzzling, but should be considered a breach of the board’s and management’s fiduciary duty to the owners of the company. That is, conveying to the Foundation Shareholder the value of a company worth hundreds of millions of dollars when there is no legal requisite to do so, assuming that PREMERA’s assertion that it is not charitable is accurate, cannot be deemed anything but a breach of fiduciary duty. But, of course, PREMERA has not (and indeed could not) identify any other “owners” of the company. It is, in the final analysis, a public asset, for the sale of which the public must be compensated fully. PREMERA’s management and directors, thus, must either accept the notion, which C&B believes is accurate, that PREMERA is a charitable corporation obligated to transfer its fair market value, or in the alternative, they should be subject to legal consequences stemming from the knowing breach of their fiduciary duty. More detailed analysis regarding the specifics of the Proposed Transaction’s transfer of fair market value will be provided in sections related to Stage Two of the Engagement, *infra* at section IV.C.

3. Management’s Competence, Experience, and Integrity

With respect to the fifth potentially disqualifying fact, the Commissioner must determine whether the competence, experience, and integrity of those persons who would control PREMERA is such that it would not be in the subscribers’ or the policyholders’ interest, and not in the public interest, to permit the acquisition of control.³⁴² PREMERA’s management and New PREMERA’s management will be the same prior to, and after, the Transaction. Thus, the Transaction should not affect management’s competence, experience, and integrity. However, the Transaction itself may be motivated by other factors (e.g., expectations of stock options, increased salary, or other compensation as a result of the proposed conversion to for-profit status), and thus, may affect

³⁴¹ PREMERA, Management Meeting, at 0010200 (providing various talking points about the conversion in response to questions about the conversion) (on file with C&B) [CONFIDENTIAL].

³⁴² RCW 48.31C.030(5)(a)(ii)(C)(III); *see also* RCW 48.31B.015(4)(a)(v).

negatively management's incentives. PREMERA should provide information as to the compensation structure that management will receive or may receive (1) once the Transaction is complete, (2) at the time of an IPO, and (3) in future years. PREMERA has recently provided executive compensation plans for the two years following conversion, but the Consultants did not have sufficient time to conduct a diligent review of the plans. These issues are analyzed in greater detail *infra* at section IV.A, as part of Stage Two of the Engagement.

4. Hazardous or Prejudicial to the Insurance-Buying Public

With respect to the sixth potentially disqualifying fact, the Commissioner must determine whether the Transaction is likely to be hazardous or prejudicial to the insurance-buying public.³⁴³ There are a variety of ways in which the conversion might be hazardous or prejudicial to the insurance-buying public. For example, this would be the case if PREMERA's financial condition, surplus levels, or other indicators of ability to satisfy policyholder claims would be weakened. Because the conversion is simply a series of transactions whereby nonprofit companies will convert to for-profit companies, PREMERA's financial condition, prior to, and after the conversion, should be the same from an operating standpoint, except to the extent of transaction costs not expected to have a material adverse effect. The Proposed Transaction might also cause material adverse tax consequences. PREMERA has not been tax-exempt from federal taxes since 1987, and has never been exempt from Washington's state taxes since its inception.³⁴⁴ However, as discussed *supra* at section III.D.1, increases in Alaska premium taxes, and the loss of benefits under I.R.C. § 833(b), could impact PREMERA's financial condition materially. In order to compensate for these effects, if they occur, PREMERA may need to raise premium rates. In addition, as discussed *supra* at section III.D.2.c.(1), the Transaction might induce PREMERA to increase premiums, reduce provider compensation, or otherwise alter its practices adversely to policyholders or health care providers. These areas are the subject of PwC's analysis, which concludes that such adverse effects are possible but not predictable. Furthermore, the analyses of the actuarial, accounting, and tax consultants could potentially disclose other potential hazards or prejudices to the insurance-buying public that, although not obvious, might result from the Transaction.

IV. STAGE TWO

As C&B's engagement was structured, prior to commencement of this evaluation, areas of analysis were segregated between two hypothetical phases, Stage One and Stage Two. As the review of the Proposed Transaction evolved, the distinctions between Stage One and Stage Two were found to be less meaningful, and a substantial portion of the second phase issues were analyzed along with those in the first phase. These have been discussed at some length in the preceding sections of this report. A few Stage Two matters, however, have not received as much attention.

³⁴³ RCW 48.31C.030(5)(a)(ii)(C)(IV); *see also* RCW 48.31B.015(4)(a)(vi).

³⁴⁴ *See supra* note 33 and accompanying text.

Under the Holding Company Acts, the Commissioner is required to approve the Transaction unless he makes one of the following fact-findings: (1) after the change of control, the domestic health carrier would not be able to satisfy a domestic health carrier's registration requirements; (2) there is substantial evidence that the acquisition would substantially lessen competition or tend to create a monopoly in insurance in Washington; (3) the acquiring party's financial condition is such as might jeopardize the health carrier's financial stability or prejudice its subscribers' interest; (4) the plans or proposals that the acquiring party has to liquidate the specific name health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to the health carrier's subscribers, and not in the public interest; (5) the competence, experience, and integrity of those persons who would control the health carrier's operations are such that it would not be in the interest of the health carrier's subscribers, and of the public, to permit the acquisition of control; or (6) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.³⁴⁵

Each of the foregoing potential fact-findings that the Commissioner is required to make in his determination of whether to approve the Transaction has been considered previously in C&B's Analysis. This Section IV is an analysis of the additional Stage Two issues that are evaluated as part of this Final Report. They are as follows: (1) conversion-related self-dealing and conflicts of interest of PREMERA's officers and trustees; (2) independence of the Foundation Shareholder and Charitable Organizations from PREMERA; and (3) the stock transfer documents and the transfer of PREMERA's fair market value.

A. Self-dealing and Conflicts of Interest for PREMERA's Officers and Trustees

Generally a company's officers and directors cannot engage in self-dealing, and there should be no conflicts of interests in making business decisions. Moreover, under the fairness and reasonableness requirements of the Holding Company Acts, as discussed *supra* at section III.D.2.e, self-dealing or conflicts of interest in the formulation of the Proposed Transaction or of PREMERA's management would undermine the public interest. In addition, self-dealing or conflicts of interest could affect management's integrity adversely, which itself would be a basis for disapproval under the fifth criteria of the Holding Company Acts. Thus, the Commissioner might be compelled on several grounds to disapprove the conversion if he finds that management engaged in self-dealing or that a conflict of interest existed.

This analysis delves into conflicts of interest that can be both facially determined, as well as those that might be inferred circumstantially. The very nature of this analysis involves the determination as to whether management's stated reasons for conversion comport with the available facts. One of the purported benefits of the Transaction articulated by PREMERA was improved

³⁴⁵ See *supra* note 58 and accompanying text.

retention of management due to increased career growth opportunities and long-term incentives.³⁴⁶ But, PREMERA acknowledged that it has "one of the most experienced management teams in the industry," which has "worked together for [five] years," and "[s]uccessfully executed PREMERA's turnaround plan."³⁴⁷ Furthermore, PREMERA noted that, according to a recent survey, it is a "Preferred Employer."³⁴⁸ PwC's executive compensation experts have determined that company-wide retention has not been a problem in the past.³⁴⁹ With respect to management's turnover rate, PREMERA provided pertinent information on October 15, 2003, but did not provide detailed support for that information. Thus, PwC has not had an opportunity to conduct meaningful due diligence regarding the newly received information.³⁵⁰ Certainly, the consideration of management retention in determining whether to convert, if there was no apparent need, could raise the specter of a conflict of interest. This could be perceived as a conflict of interest because management's true motivations might be their own enrichment. Such an inference is based on more than mere baseless speculation. A presentation to the board stated that "career growth opportunities" and "long-term incentive" were advantages of being a for-profit company.³⁵¹ Perhaps these are advantages for management, but they may not be advantages for PREMERA's policyholders and insureds. On this record, the Commissioner would be justified in concluding that improved compensation for management was a material motivator for the Proposed Transaction without demonstrated benefits for PREMERA's policyholders or the public. In the absence of other sufficiently persuasive rationale for the conversion, its anticipated economic benefits for management cannot be ignored. The underlying potential conflict is a factor that the Commissioner is quite justified in considering when evaluating whether to approve the Transaction. In that analysis, the record before the Commissioner provides thin support for management's assertion that the Transaction will improve management retention.

Additionally, the amount of compensation that management receives should be subject to the non-inurement restrictions on nonprofit corporations. A Chapter 24.03 RCW nonprofit corporation, such as PBC, may pay compensation in a reasonable amount to its members, directors,

³⁴⁶ PREMERA, Board Retreat: Capital Planning Options, at 0016918, 0016921 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

³⁴⁷ Goldman, PBC: Mock Presentation to Investors, at 0017337 (Oct. 6, 2002) (on file with C&B) [CONFIDENTIAL].

³⁴⁸ PREMERA, Board of Directors Minutes at 0035582 (Feb. 11-12, 2003) (on file with C&B) [CONFIDENTIAL].

³⁴⁹ PwC Executive Compensation Report, *supra* note 34, at 42 [CONFIDENTIAL].

³⁵⁰ *Id.* (PwC cannot ascertain from the limited information provided by PREMERA whether the officer levels provided by PREMERA and the sample size are comparable to market sources).

³⁵¹ Capital Planning Options Board Retreat, at 0037043 (Sept. 9, 2001) (on file with C&B) [CONFIDENTIAL].

or officers for services rendered,³⁵² but may not make any distribution of income to such persons.³⁵³ A Chapter 24.06 RCW nonprofit corporation, such as PREMERA, may fix compensation for its officers and agents,³⁵⁴ and although not expressly stated in Chapter 24.06 RCW, PREMERA's nonprofit nature necessarily implies that the corporation may not otherwise distribute corporate income or profits to officers or directors.³⁵⁵ The rationale behind the non-inurement restriction on nonprofit corporations has been explained as follows:

Why do nonprofits operate under a non-distribution constraint that prohibits those who control nonprofits from benefitting from or distributing earnings? Bound by their promise to use their resources to advance their missions rather than benefit private parties, nonprofit organizations emerge as a solution to what Hansmann called "contract failure." People seek out nonprofits in areas where they cannot penetrate and police services using ordinary contractual devices, in situations where trust and information are scarce, and assessing the value of the services they receive for their money is difficult. The legally binding non-distribution constraint of nonprofit organizations provides a powerful contractual assurance that the consumer will not be taken advantage of or betrayed by producers for personal gains. The fact that profits are not allowed to be distributed to shareholders or owners gives the consumer of services a certain confidence that the transaction will result in a fair exchange.

....

Hansmann's central argument is consistent. We can understand the emergence of the nonprofit sector by looking at the unsatisfied demand for certain kinds of goods. Contract failure opens a door through which the nonprofit sector can move and capitalize on some of the shortcomings of for-profit firms. For Hansmann, the appearance and continued survival of nonprofit activity in a broad array of fields ultimately comes down to the ability of these organizations to satisfy an unmet demand by inspiring trust.³⁵⁶

³⁵² RCW 24.03.030(4).

³⁵³ RCW 24.03.030(2); see RCW 24.03.005(3) (defining a "nonprofit corporation" as "a corporation no part of the income of which is distributable to its members, directors or officers").

³⁵⁴ RCW 24.06.030(11).

³⁵⁵ Cf. *Sound Health Ass'n v. Comm'r*, 71 T.C. 158, 159 (1978) ("As a nonprofit corporation, the petitioner cannot, by Washington law, be operated for the personal benefit of any member, officer, or director.").

³⁵⁶ Peter Frumkin & Alice Andre-Clark, *Nonprofit Compensation and the Market*, 21 U. HAW. L. REV. 425, 465-67 (1999) [hereinafter Frumkin & Andre-Clark].

Washington courts do not appear to have elaborated upon the limits on compensation paid by nonprofit corporations, however, the I.R.C. and cases construing it provide some guidance. For example, organizations may be exempt from federal income taxation under I.R.C. §§ 501(c)(3) and 501(c)(4) only so long as no part of their net earnings inure to the benefit of any private shareholder or individual. By further example, pursuant to I.R.C. § 833(c)(3)(A)(vi), a non-BCBS health insurance plan may receive the same favorable tax treatment as BCBS plans if, *inter alia*, "no part of its net earnings inures to the benefit of any private shareholder or individual."³⁵⁷ The purpose of the non-inurement restriction is to stay the hands of those who are in a position to siphon off the organization's funds for their own benefit.³⁵⁸ When the nonprofit organization's purposes are sacrificed to the private interests of those in control, the organization is made to serve a private interest.³⁵⁹ For purposes of these I.R.C. restrictions, compensation constitutes prohibited inurement of a private benefit if the compensation is "unreasonable."³⁶⁰

Whether compensation paid by a nonprofit corporation is reasonable or excessive may be determined by reference to criteria similar to those which apply in determining whether compensation paid by a for-profit organization is deductible under I.R.C. § 162.³⁶¹ In the context of for-profit corporations, compensation in excess of reasonable compensation for services rendered is subject to disfavored tax treatment; the excess above reasonable compensation being treated as a nondeductible dividend distribution rather than a deductible expense under I.R.C. § 162.³⁶² The reasonableness of compensation is a question of fact.³⁶³ Factors considered by the courts in determining whether compensation is reasonable in the for-profit context of § 162 include: (a) the employee's qualifications; (b) the nature, extent, and scope of the employee's work, including positions held, hours worked, and duties performed; (c) the size and complexities of the employer's business, as indicated by its sales, net income, or capital value; (d) a comparison of salaries paid

³⁵⁷ I.R.C. § 833(c)(3)(A)(vi).

³⁵⁸ *United Cancer Council, Inc. v. Comm'r*, 165 F.3d 1173, 1176 (7th Cir. 1999).

³⁵⁹ *Sound Health Ass'n*, 71 T.C. at 186.

³⁶⁰ See, e.g., *Bubbling Well Church of Universal Love v. Comm'r*, 670 F.2d 104, 105 (9th Cir. 1981); *Mabee Petroleum Corp. v. United States*, 203 F.2d 872, 876 (5th Cir. 1953).

³⁶¹ *Alive Fellowship of Harmonious Living v. Comm'r*, 47 T.C.M. (CCH) 1134 (1984) (no page numbers available).

³⁶² See, e.g., *Elliotts, Inc. v. Comm'r*, 716 F.2d 1241, 1242 (9th Cir. 1983); *B & D Founds., Inc. v. Comm'r*, 2001 Tax Ct. Memo LEXIS 298, at *23-25 (T.C. Oct. 3, 2001); *Labelgraphics, Inc. v. Comm'r*, 1998 Tax Ct. Memo LEXIS 345, at *20-21 (T.C. Sept. 28, 1998); *Mad Auto Wrecking, Inc. v. Comm'r*, 1995 Tax Ct. Memo LEXIS 146, at *13-16 (T.C. Apr. 5, 1995).

³⁶³ *B & D Founds.*, 2001 Tax Ct. Memo LEXIS 298, at *24; *Labelgraphics, Inc.*, 1998 Tax Ct. Memo LEXIS 345, at *20; *Mad Auto Wrecking, Inc.*, 1995 Tax Ct. Memo LEXIS 146, at *16.

with the employer's gross and net income;³⁶⁴ (e) the prevailing general economic conditions; (f) a comparison of salaries with distributions to shareholders and retained earnings; (g) the prevailing rates of compensation for comparable positions in comparable concerns;³⁶⁵ (h) the salary policy of the employer as to all employees; (i) the amount of compensation paid to the particular employee in previous years;³⁶⁶ (j) the employer's financial condition; (k) whether the employer and employee dealt at arm's length or whether a conflict of interest were indicated;³⁶⁷ (l) whether the employee guaranteed the employer's debt; (m) whether the employer offered a pension plan or profit-sharing plan to its employees; and (n) whether the employee was reimbursed by the employer for business expenses that the employee paid personally.³⁶⁸ A compensated control person "probably cannot escape insider status by formally distancing herself from the wage-setting process."³⁶⁹

What constitutes "comparable" positions or companies for purposes of executive compensation seems to be a discretionary question on the part of the fact-finder. Courts have rejected expert testimony that failed to provide specifics on the particular executives involved, including both their particular qualifications and skills, and the similarities in the services

³⁶⁴ Net income is usually more important, because it more accurately gauges whether a corporation is disguising the distribution of dividends as compensation. *B & D Founds., Inc.*, 2001 Tax Ct. Memo LEXIS 298, at *38. No particular ratio between compensation and gross or net taxable income is a prerequisite for a finding of reasonableness. *Id.*

³⁶⁵ This is also expressed as "a comparison of the employee's salary with those paid by similar companies for similar services." *Elliotts, Inc.*, 716 F.2d at 1246.

³⁶⁶ Where a large salary increase is at issue, it is useful to compare past and present duties and salary payments. *Elliotts, Inc.*, 716 F.2d at 1245; *Labelgraphics, Inc.*, 1998 Tax Ct. Memo LEXIS 345, at *24. In addition, bonuses not paid pursuant to a structured, and formal program, consistently applied, are suspect. *Labelgraphics, Inc.*, 1998 Tax Ct. Memo LEXIS 345, at *36-37 (disregarding expert testimony that executive's 1990 bonus was reasonable, where it was almost three times the size of his 1988 bonus, even though the company enjoyed significantly higher gross receipts, as well as a substantially higher net profit after taxes, for its 1988 fiscal year than for its 1990 fiscal year). "On the other hand, evidence of a reasonable, longstanding, consistently applied compensation plan is evidence that the compensation paid in the years in question was reasonable." *Elliotts, Inc.*, 716 F.2d at 1247. A contingent compensation formula is not necessarily unreasonable if it "overcompensates in good years and undercompensates in bad years," and it is also "permissible to pay and deduct compensation for services performed in prior years." *Id.* at 1248.

³⁶⁷ See *Alive Fellowship of Harmonious Living v. Comm'r*, 47 T.C.M. (CCH) 1134 (1984) (no page numbers available) (stating that "[o]ne factor to consider [in determining the reasonableness of compensation] is whether comparable services would cost as much if obtained from an outside source in an arm's-length transaction") (citing *B.H.W. Anesthesia Found. v. Comm'r*, 72 T.C. 681, 686 (1979)).

³⁶⁸ *Elliotts, Inc.*, 716 F.2d at 1245-48; *Mad Auto Wrecking, Inc.*, 1995 Tax Ct. Memo LEXIS 146, at *17-18.

³⁶⁹ *Frumkin & Andre-Clark, supra* note 356, at 432-33. *Frumkin & Andre-Clark* go on to state that *United Cancer Council v. Comm'r*, 165 F.3d 1173 (7th Cir. 1999), suggests "that setting up an independent compensation committee will not protect an influential insider from an inurement finding." *Id.* at 433.

rendered.³⁷⁰ Courts have rejected expert testimony that failed to provide specifics on the “comparable companies,” including size (annual sales), type of business, number of employees, and business conditions in the areas in which they operate.³⁷¹ For-profit companies and PREMIER may not be comparable for purposes of evaluating the reasonableness of executive compensation. The following observations may prove helpful in this regard:

It is often assumed in the old reasonable compensation/private benefit cases, and now with the excess-benefit rebuttable presumption, that comparisons can and should be made between the tax-exempt organization and a “comparable” for-profit corporation. The comparability assumption is problematic because it never even raises the question of how the nonmonetary goals and aspirations of the exempt organization should be factored into the decision-making process. Exempt organizations have nonmonetary, mission-driven goals and the outcomes are sometimes intangible, unmeasurable, and even unknown. . . . Further, some have argued that exempt organizations provide nonmonetary rewards for employees which are different from those provided by a for-profit company. These include personal fulfillment and growth opportunities, flexible lifestyles, and, in some cases, prestige from being associated with the nonprofit entity (for example, physicians in teaching-hospital settings).³⁷²

This may explain, for example, why the position of President of the United States attracts qualified candidates, even though the monetary compensation for serving in this public sector (*i.e.*, nonprofit) position is far lower than the compensation typically paid to the CEO of a large private sector (*i.e.*, for-profit) organization. Indeed, in 1997, the Office of Oversight and Investigation, Council of the City of New York, conducted a study of executive compensation in nonprofit organizations contracting with New York City.³⁷³ The three methods of analysis selected were: (1) comparison to compensation paid by other nonprofits of similar size; (2) comparison to salaries received by government officials responsible for delivering public services, such as the Mayor of New York City and the commissioners of several of the city’s agencies; and (3) comparison to the median compensation paid to executive directors of nonprofit organizations of similar size, including

³⁷⁰ *Labelgraphics, Inc.*, 1998 Tax Ct. Memo LEXIS 345, at *28-29.

³⁷¹ *B & D Founds., Inc.*, 2001 Tax Ct. Memo LEXIS 298, at *54-55.

³⁷² Consuelo Lauda Kertz, *Executive Compensation Dilemmas in Tax-Exempt Organizations: Reasonableness, Comparability, and Disclosure*, 71 Tul. L. Rev. 819, 856-57 (1997); see Frumkin & Andre-Clark, *supra* note 356, at 471 (arguing that allowing a nonprofit corporation to compare compensation of its management to that of for-profit companies “is problematic because it threatens to undermine the fragile identity of [nonprofits] as service and mission-driven organizations where motives and rewards cannot be measured in terms of dollars and cents”).

³⁷³ OFFICE OF OVERSIGHT & INVESTIGATION, COUNCIL OF THE CITY OF N.Y., REPORT: TO PROFIT OR NOT-TO-PROFIT: AN EXAMINATION OF EXECUTIVE COMPENSATION IN NOT-FOR-PROFIT ORGANIZATIONS CONTRACTING WITH NEW YORK CITY (1997), *reprinted in* 25 FORDHAM URB. L.J. 471 (1998).

a calculation of compensation as a percentage of the organization's total functional expenses.³⁷⁴ The study made use of a survey conducted by Abbott, Langer and Associates (the "ALA Survey"), an independent management consulting firm known for its surveys of nonprofit organizations across the country.³⁷⁵ The ALA Survey was selected because of its comprehensive sample size and its widespread use by compensation specialists.³⁷⁶ Regional differences in compensation levels were also taken into account.³⁷⁷ There is precedent in compensation analysis, therefore, for limiting organizations "comparable" to a nonprofit corporation to other nonprofit entities.

Even assuming that the compensation of PREMERA's officers and directors is currently reasonable by nonprofit standards and that their compensation by New PREMERA will be reasonable by for-profit standards, a conflict of interest may exist. Because of the fundamental difference in the natures of for-profit and nonprofit corporations, it is likely that officers and directors could expect to receive higher compensation from for-profit New PREMERA than from nonprofit PREMERA. This could create a conflict of interest tainting the decision to convert from a nonprofit corporation to a for-profit corporation. Such a conflict of interest may by itself justify disapproval of the Transaction.³⁷⁸ Doubts about this issue might be alleviated substantially by more complete disclosure of PREMERA's compensation and incentive plans.

Typically, in a publicly-traded company, the public market favors management compensation that is in line with management in other comparable for-profit companies, especially compensation that is based on incentives such as stock options. In fact, sophisticated investors gain confidence from the alignment of management's interest with their own interests through stock incentives and similar plans. Conversely, if management is not compensated reasonably, then the value of New PREMERA's shares may actually be reduced to the extent that the public market believes that management does not have a sufficient incentive to maximize profits. Investors will prefer that management's interests are aligned with stockholders' interests to the greatest extent possible in order to maximize shareholder value. However, in order to reduce the possibility that the decision to convert is tainted by the officers' and directors' self-interest in the higher compensation levels that would be allowable post-conversion, full disclosure of the elements of proposed compensation, and the process by which they were formulated, is essential.

³⁷⁴ *Id.* at 482-84.

³⁷⁵ *Id.* at 483.

³⁷⁶ *Id.*

³⁷⁷ *Id.* at 488-90.

³⁷⁸ *Cf.* RCW 70.45.070(4) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved unless "[n]o conflict of interest exists related to the acquisition, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the nonprofit corporation, acquiring person, or other parties to the acquisition").

The primary information and document required to complete an analysis of self-dealing and conflicts of interests is the executive compensation and benefit plans. PREMERA finally delivered the plans (at least for the first two years) on October 17, 2003, after the Consultants initial request nearly a year ago. Prior to that date, PREMERA had only identified, in general terms, the outer limits of the compensation and benefit plans that it would adopt once PREMERA converted. These plans are often very complicated, with numerous provisions that dictate reasonableness or excessiveness. Clearly, if the plans were excessive, this could be considered self-dealing or a conflict of interest. Due to PREMERA's failure to provide these plans prior to the October 15, 2003, deadline to amend the Form A, C&B and the other Consultants cannot express a conclusion as to whether, in this respect, PREMERA's management engaged in self-dealing, or as to whether there exists a conflict of interest. Assuming that management's current employee compensation plan is reasonable as compared to other similarly situated nonprofit companies, then PwC should compare the difference between the current compensation received from nonprofit PREMERA to the compensation received from for-profit New PREMERA. If New PREMERA's plan is substantially more generous, further analysis may be necessary as to its reasonableness.

B. Independence of Foundation Shareholder and Charitable Organizations from PREMERA

Among the concerns to which the Proposed Transaction gives rise, one of the most significant is the complete lack of independence on the part of those that are proposed to govern the Foundation Shareholder. While the Form A does not specify the manner of selecting the initial directors, it is apparent that PREMERA will unilaterally make this selection. Moreover, PREMERA will nominate all replacement directors.³⁷⁹

There are many reasons why this lack of independence is alarming and, by itself, probably justifies disapproval of the Transaction. First, and as illustrated *supra* at section III.C.2.b.(2), the Foundation Shareholder may be directed to engage in activities of substantial benefit to PREMERA but of no discernable value to the Charitable Organizations or the public. Second, a single Foundation Shareholder affiliated with PREMERA controlling the disbursement of the Shares to the Charitable Organizations is almost certainly not in the public interest. Third, there will be a number of organizational and policy decisions to be made by the Foundation Shareholder as the Proposed Transaction is implemented as to which the interests of the Charitable Organizations and the public on the one hand, and those of PREMERA on the other, are likely to diverge substantially. In those instances, it is essential that the directors of the Foundation Shareholder be unrestrained in their loyalty to the underlying public policy and charitable mission. Finally, it defies common sense to understand how, what is effectively the buyer of an enterprise (New PREMERA), can justify retaining control of the purchase price paid to the seller (the public). But that is exactly the effect achieved by permitting the proposed control by PREMERA of the Foundation Shareholder.

³⁷⁹ See Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, at § 3.5

Assuming *arguendo* that the current structure is maintained, the Transaction is almost certainly not in the public interest under the Holding Company Acts, because the public interest requires that the Transaction's proceeds be controlled as charitable funds independently of New PREMERA, and be used for public health purposes consistent with PREMERA's original purpose.³⁸⁰ In addition, an issue might be raised as to whether the charitable entity established to hold the proceeds of the conversion will be broadly based in, and representative of, the community in which PREMERA offers health care coverage, taking into consideration the structure and governance of such entity.³⁸¹

The Foundation Shareholder's governance is not made independent from PREMERA because of the inclusion of "Independent Directors," as defined by the Bylaws. Despite the self-serving label, these directors are anything but independent from PREMERA. Section 3.2.2 of the Bylaws states, in part, that a majority of the Foundation Shareholder's Board will be comprised of so-called Independent Directors, which will consist of: (1) PREMERA's, PBC's, or their predecessors' current or former Board members; or (2) individuals nominated by PREMERA and elected or appointed by a majority vote of the Independent Directors.³⁸² Clearly, the proposed governance of the Foundation Shareholder is not in the public interest because of PREMERA's unjustifiable and excessive influence. These provisions include, without limitation, Sections 3.5, 3.7, 3.8, 3.10, and 3.12. Additionally, it is not in the public interest for the Foundation Shareholder to become a lobbying arm for Health Insurers, because those activities do not promote the health of the residents of Washington and Alaska, as discussed *supra* at section III.C.2.b.(2).

C. Stock Transfer Documents and the Transfer of Fair Market Value

As discussed *supra* at section III.D.2.f, the public interest requires both that the Foundation Shareholder receive PREMERA's fair market value, and that the Foundation Shareholder's ability to realize that fair market value in cash not be placed at unreasonable risk by the manner in which

³⁸⁰ Cf. RCW 70.45.070(8) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved unless "[t]he proceeds from the acquisition will be controlled as charitable funds independently of the acquiring person or parties to the acquisition, and will be used for charitable health purposes consistent with the nonprofit corporation's original purpose, including providing health care to the disadvantaged, the uninsured, and the underinsured and providing benefits to promote improved health in the affected community").

³⁸¹ Cf. RCW 70.45.070(9) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved unless "Any charitable entity established to hold the proceeds of the acquisition will be broadly based in and representative of the community where the hospital to be acquired is located, taking into consideration the structure and governance of such entity.").

³⁸² Foundation Shareholder, Bylaws, Form A: Exhibit E-2, *supra* note 115, at 2.

the Transaction is structured.³⁸³ Fair market value is “the amount of money which a purchaser willing, but not obliged, to buy the property would pay an owner willing, but not obliged, to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied.”³⁸⁴

The documents relevant to this question are as follows: (a) the Stock Restrictions Agreement; (b) the Voting Trust and Divestiture Agreement; (c) the Registration Rights Agreement; (d) the Stockholder Protection Rights Agreement; (e) the Excess Share Escrow Agreement; and (f) the Indemnification Agreement. In order to make a determination as to whether fair market value has been conveyed, the Commissioner will require Blackstone’s opinion as to whether the structure of the Proposed Transaction is such that the cash value that can reasonably be expected to be realized eventually through the Foundation Shareholder’s sale of stock is reasonably likely to approximate PREMERA’s fair market value (adjusted for the time-value of money). Generally, the Foundation Shareholder cannot reasonably be expected to receive fair market value in cash for the Shares due to the foregoing agreements, because the Foundation Shareholder will: (1) be under a compulsion to sell; (2) not be free to choose the time or amount of its sale of the Shares; and (3) will not be free to sell a controlling block of New PREMERA stock to the highest bidder on the open market. Moreover, though nominally the largest owner of New PREMERA stock, the Foundation Shareholder will be barred from exercising any of the authority typically and essentially inherent in that position. Thus, the Foundation Shareholder will be unable to prevent New PREMERA’s management from conducting the companies’ affairs in a manner reasonably deemed by the Foundation Shareholder to be inconsistent with its interests and the value of its stock. Compounding this problem is the reverse ability of New PREMERA to effectively govern the manner in which the Foundation Shareholder conducts its affairs, permitting potential decisions by the Foundation Shareholder directors that could benefit New PREMERA at the expense of the Charitable Organizations.

When a charitable foundation, in effect, sells 100 percent of the ownership of a BCBS plan to an acquirer such as WellPoint or Anthem, as in the proposed CareFirst transaction, it is clear that the consideration paid from the acquirer to the foundation must include a control premium. “A ‘control premium’ typically refers to the additional amount a buyer would pay for a block of shares that would give the buyer control of a corporation.”³⁸⁵ Conversely, “a control premium is realized

³⁸³ See text *supra* at section III.C.2.e (discussing the impact of RCW 24.03.225(3) on the public’s interest that the assets of the sale not only be transferred to PREMERA on condition that they will be safeguarded for charitable purposes, but also that they be transferred to the Foundation Shareholder upon PREMERA’s dissolution); cf. RCW 70.45.070(5), (6) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved unless “[t]he nonprofit corporation will receive fair market value for its assets” and “[c]haritable funds will not be placed at unreasonable risk, if the acquisition is financed in part by the nonprofit corporation”).

³⁸⁴ *In re Confirmation of Local Improvement No. 6097*, 52 Wash. 2d 330, 333–34, 324, P.2d 1078, 1080 (1958); see also BLACK’S LAW DICTIONARY 1549 (7th ed. 1999).

³⁸⁵ *Hawes v. Colorado Div. of Ins.*, 32 P.3d 571, 575 (Colo. Ct. App. 2001), *rev’d on other grounds*, 65 P.3d 1008 (Colo. 2003).

by sale of a controlling block of stock.”³⁸⁶ If a controlling block of shares is offered to the highest of multiple bidders, all other terms of the proposed sale being equal among bidders, the highest bid will, of necessity, incorporate a control premium. Where there are no competing bidders (e.g., where a single buyer and a single seller have entered into a purchase/sale agreement), a control premium can be taken into account by a valuation consultant in the determination of the fair market value of the controlling block of shares. In the Proposed Transaction, there is no third party from which to receive a control premium. Regardless of the potential to receive a control premium through an alternative transaction, the Commissioner must analyze the Proposed Transaction and not an alternative in order to determine fairness under the criteria of the Holding Company Acts.

Under the Holding Company Acts, the Transaction is unfair because of restrictions upon the Shares that affect the control and marketability of the Shares, and not because there may have been some alternative transaction, which may have satisfied PREMERA’s goals while at the same time providing greater value. However, in analyzing the Proposed Transaction, the foregoing control premium analysis is still applicable in that the Foundation Shareholder could receive such a premium by selling a controlling block of the Shares in the open market were it not for the Stock Governance Agreements. The divestiture schedule effectively prevents the Foundation Shareholder from ever receiving a control premium.

[T]o permit the hypothetical bifurcation of an otherwise integrated bundle of property for valuation purposes would severely undermine the estate tax system and permit abusive manipulation by inviting an executor to invent elaborate scenarios of disaggregated disposition in order to minimize total value. . . . For example, an estate in possession of all shares of a corporation . . . could, under the regime urged by the estate here, arbitrarily slice the . . . block so thinly as to deny attribution of a control premium to any resulting block.³⁸⁷

Under these circumstances, the Commissioner would be justified in determining that it is not in the public interest for PREMERA to enter into a Transaction that would result in the inability of the Foundation Shareholder to ever realize the value of control which could have been obtained in an alternative transaction or in the Proposed Transaction if it did not contain the restrictions at issue. It is unclear whether such an alternative exists due to PREMERA’s lack of diligence regarding mergers or affiliations, as discussed *supra* at section III.D.2.e. [

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] Moreover, the Proposed Transaction creates the potential for a two-step process (conversion/IPO followed years later by an acquisition), as opposed to an integrated conversion/acquisition, such as the one proposed by CareFirst. Clearly, in the latter situation, the public receives a control premium, assuming proper measures were followed by the

³⁸⁶ *Foltz v. U.S. News & World Report, Inc.*, 865 F.2d 364, 372 (D.C. Cir. 1989).

³⁸⁷ *Estate of Curry v. U.S.*, 706 F.2d 1424, 1428 (7th Cir. 1983); *accord Foltz*, 865 F.2d. at 372.

nonprofit company's board. However, in the former scenario, the public might not receive a full control premium because some, if not all, of the Shares will have been divested. A two-step process may be preferred by a BCBS plan, because in the first step the Commissioner would not have an opportunity to consider other potential issues that may prevent an integrated conversion/acquisition. The Proposed Transaction may in fact be the first step in such a two-step process. Nonetheless, there is no strong evidence to suggest that PREMERA is attempting a two-step transaction; and thus, the Commissioner may have an insufficient record upon which to base a fact-finding that the Transaction is not in the public interest on this basis alone.

Assuming *arguendo* that there is not a viable alternative to the Transaction that provides a greater value to the Foundation Shareholder, then the Commissioner has to determine whether the Stock Governance Agreements are in the public interest. At the outset, it should be noted that many of the restrictions on the Foundation Shareholder's ability to sell its New PREMERA stock are probably artifices required by PREMERA's interpretation of its agreement with the BCBSA as a licensing condition.³⁸⁸ Be that as it may, the public interest requires that the Foundation Shareholder receive fair market value for its Shares. As presented as part of the Structural Issues, PREMERA was given the opportunity to (1) provide unequivocal assurance that PREMERA's fair market value would be conveyed to the Charitable Organizations; and (2) include adequate measures to assure that the consideration will be structured to take into account potential reductions in fair market value due to the stock restrictions (including those related to liquidity, governance, and marketability) that are included in the Stock Governance Agreements. PREMERA has not addressed the foregoing concerns, and without more, the Transaction is not in the public interest because fair market value will not have been transferred to the Foundation Shareholder. Assuming that each of the restrictions are absolutely necessary to maintain the BCBS license, the potential loss of the Mark must be found to be more detrimental to PREMERA's value than the Foundation Shareholder's loss in value of the Shares due to the restrictions in order to justify maintaining the Mark. In the absence of such finding, the Proposed Transaction fails the applicable legal requirement that fair market value be conveyed to the Charitable Organizations. Although difficult to quantify, Blackstone has concluded that the loss of the Mark would meaningfully affect PREMERA's value due to the following: [REDACTED] PROPRIETARY MATERIAL REDACTED] (2) entry of a new competitor with the Mark; and (3) membership loss due to increased competition.³⁸⁹ Even if the Mark's value outweighs the loss in the value of the Shares due to the restrictions, PREMERA has not demonstrated that the restrictions have been minimized to the extent that the BCBS license is not revoked. Nor has any evidence been offered of efforts to seek BCBSA's agreement to eliminate or reduce these restrictions. As has been stated previously, the Commissioner is not the applicant, and he is not required to amend the Transaction on the applicant's behalf. The evidence as currently available, weighs in favor of disapproval, because fair market value will not have been transferred.

³⁸⁸ See PREMERA Blue Shield License Agreement, at 0000123-26 (Jan. 12, 1995) (on file with C&B) [CONFIDENTIAL]; PBC License Agreement, at 0000211-14 (on file with C&B) [CONFIDENTIAL].

³⁸⁹ Blackstone Valuation and Fairness Report, *supra* note 35, at 9 [CONFIDENTIAL].

The following subsection describes in greater detail the fairness, or lack thereof, of the following agreements: (a) the Stock Restrictions Agreement; (b) the Voting Trust and Divestiture Agreement; (c) the Registration Rights Agreement; (d) the Stockholder Protection Rights Agreement; (e) the Excess Share Escrow Agreement; and (f) the Indemnification Agreement.

1. Fairness of Agreements

As discussed above, many of the restrictions are alleged to be required in order to maintain the Mark. However, there is no evidence to support the assertion that all of the restrictions imposed in the Proposed Transaction are, indeed, necessary to maintain that Mark. As a reference point, some Consultants may use analysis of precedent transactions to demonstrate that less severe restrictions have been permitted without the loss of the Mark. However, precedent transactions merely provide evidence that the Proposed Transaction is not in the public interest because lesser restrictions have been allowed by the BCBSA. These precedents do not establish that even the lesser restrictions are in the Washington public's interest or are the least restrictive available in this Transaction without losing the Mark. Thus, without more, the Proposed Transaction fails the requirements of the Holding Company Acts because fair market value cannot be transferred as a result of the Stock Governance Agreements and other agreements. The following subsections provide examples of some of the more egregious restrictions that impair the transfer of the fair market value of the Shares, but by no means should be considered as the complete list of restrictions that impair the transfer of fair market value. As discussed in greater detail in Blackstone's report, there are numerous other provisions that restrict the Foundation Shareholder's ability to vote the Shares, to sell the Shares, or to otherwise control the Shares.³⁹⁰

a. Stock Restrictions Agreement

The Stock Restrictions Agreement complies with RCW 23B.06.270, but some provisions are not in the public interest. Moreover, provisions regarding board discretion³⁹¹ are required to conform with changes made to the Washington Charitable Organization's Articles of Incorporation and Bylaws. The Stock Restrictions Agreement states that the Foundation Shareholder will allocate a certain percentage of the proceeds from the sale of the Shares to the Washington Charitable Organization.³⁹² However, PREMERA has not identified the percentage to be allocated. Without such an allocation percentage, PREMERA has not provided for the transfer of fair market value. In fact, PREMERA has not provided for the transfer of any value whatsoever if the proceeds are not allocated to the Charitable Organizations. While Regulators may themselves discuss this issue, it is PREMERA that must provide for the transfer of fair market value, and the Regulators and

³⁹⁰ *Id.* at 51-59 [CONFIDENTIAL].

³⁹¹ New PREMERA, Form A: Exhibit G-3, § 2.04, at 4 (Sept. 17, 2002), *available at* <http://www.insurance.wa.gov/special/premera/filing/ExhibitG-3.pdf>.

³⁹² *Id.* at § 2.04, at 4.

Consultants are merely required to determine the fairness, or the lack thereof, as the case may be. Therefore, the Transaction fails this fundamental legal requirement.

b. Voting Trust and Divestiture Agreement

The Voting Trust and Divestiture Agreement complies with RCW 23B.07.300, but some provisions are not in the public interest. The Voting Trust and Divestiture Agreement's provisions have a significant effect on fair market value. This agreement is not in the public interest, because it allows New PREMERA to effectively force the Foundation Shareholder to sell up to all of the Shares upon such terms as approved by New PREMERA through an Independent Board Majority,³⁹³ which is defined as New PREMERA's directors comprised of a majority of Independent Directors (as defined in New PREMERA's articles), and a majority of overall Board Directors at which a quorum is present.³⁹⁴ During the period in which the Foundation Shareholder will own in excess of 50 percent of New PREMERA's stock, this would enable New PREMERA, effectively, to force the acceptance of a tender offer even if the owners of all other Shares of New PREMERA's stock were opposed to the tender offer. Moreover, giving such power to New PREMERA would put the Foundation Shareholder at risk of having its Shares sold as a result of the acceptance of an unreasonably low tender offer (below market value) or at a time beneficial only to New PREMERA.

Typically, provisions that compel a stockholder to divest its Shares pursuant to a predetermined schedule would have a negative effect on the fair market value of that stock, because those Shares are not freely tradeable. As has been stated previously, the Transaction should be denied because fair market value will not have been transferred. Furthermore, it is not in the public interest to impose upon the Foundation Shareholder the burden of any portion of the expenses or compensation of the Trustee, or the obligation to indemnify the Trustee, whose services would not be required at all if PREMERA paid its fair market value to the Foundation Shareholder in cash on the effective date of the Transaction, and whose services are largely structured to benefit PREMERA.

c. Registration Rights Agreement

The Registration Rights Agreement complies with RCW 23B.06.270, but some provisions are not in the public interest. For the reasons discussed *supra* at section IV.B, with respect to the concept of "Independent Director" provided in the proposed Articles of Incorporation, any reliance

³⁹³ New PREMERA., Form A: Exhibit G-4, § 5.02, at 11 (Sept. 17, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitG-4.pdf>.

³⁹⁴ See *id.* art. I(x), at 5 (defining "Independent Board Majority" as in the Articles of Incorporation); New PREMERA, Form A Exhibit B-1, art. III, § 2, at 2 (Sept. 17, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitB-1.pdf> (providing, within the Articles of Incorporation, that an "Independent Board Majority" consists of "both a majority of the Independent Directors and a majority of the whole Board of Directors").

upon this provision in the Registration Rights Agreement is not in the public interest including, without limitation, provisions regarding pricing, underwriter discounts, commissions, and holdback.

Moreover, it is contrary to the public interest to permit New PREMERA to force the Foundation Shareholder to sell all or part of the Shares beyond what is required by the Voting Trust and Divestiture Agreement, which is itself contrary to the public interest.³⁹⁵ The Purchase Option reduces the value of the Shares, because that provision is another restriction on the Foundation Shareholder's ability to control the disposition of the Shares. Particularly troublesome would be the scenario in which, but for the Commissioner's disapproval of the concept of "Independent Director," which essentially controls the Foundation Shareholder, PREMERA could require the Foundation Shareholder to sell the Shares to New PREMERA, at a price or time to be determined by New PREMERA and the Foundation Shareholder (the latter being controlled by New PREMERA-affiliated "Independent Directors"). Like the Voting Trust and Divestiture Agreement, the terms of the Registration Rights Agreement prevent fair market value from being transferred to the Foundation Shareholder.

d. Stockholder Protection Rights Agreement

The Stockholder Protection Rights Plan (the "Poison Pill Plan") is governed by RCW 23B.06.020(1), which states in pertinent part that:

[i]f the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, voting powers, and relative rights, within the limits set forth in RCW 23B.06.010(1)(b) and this section of (a) any class of shares before the issuance of any shares of that class, or (b) one or more series within a class, and designate the number of shares within that series, before the issuance of any shares of that series.³⁹⁶

Under New PREMERA's Articles of Incorporation, the Board of Directors seems to have such rights with regard to the preferred stock that may be issued, but not for the common stock.³⁹⁷

Assuming the directors have the authority to create rights, the question remains as to whether the particulars of the Poison Pill Plan comply with Washington law.

³⁹⁵ See New PREMERA, Form A: Exhibit G-5, § 5, at 12-13 (Sept. 17, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitG-5.pdf> (listing, within § 5 ("Purchase Options") of the Registration Rights Agreement, scenarios whereby New PREMERA would have options to buy Shares from the Foundation Shareholder).

³⁹⁶ RCW 23B.06.020(1).

³⁹⁷ See New PREMERA, Form A: Exhibit B-1, art. II, § 1, at 1 (Sept. 17, 2002), available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitB-1.pdf> (giving the Board of Directors powers over the division and voting-rights determination of preferred stock; similar powers over the common stock were not granted).

A number of devices have been used by corporations in recent years to provide their boards of directors with greater bargaining strength in the face of, or otherwise to defend against, a takeover, including implementation of a staggered board, adoption of supermajority voting provisions, share repurchases, self tenders, shareholder rights plans . . . , defensive sales or purchases of assets and issuances of shares. Although Washington courts have never had occasion to consider these devices, Washington courts almost certainly would consider the substantial body of Delaware case law on antitakeover measures if called upon to consider such issues. Any analysis would have to be based upon the basic elements of directors' duties of care and loyalty under Washington law.³⁹⁸

A director must perform his duties: "(a) [i]n good faith; (b) [w]ith the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (c) [i]n a manner the director reasonably believes to be in the best interests of the corporation."³⁹⁹ The director's common law duties of care and loyalty seem to be implied in Washington's codified duties of directors.⁴⁰⁰ Because the duties of care and loyalty in Delaware are embodied in Washington's corporate statutes, an analysis of poison pills under Delaware Law would be appropriate.

However, no further analysis will be conducted because poison pills have become very widespread, and PREMERA's poison pill seems to be typical of those commonly used in the public markets.⁴⁰¹ There are indications that a trend is emerging that will reduce or eliminate the use of these devices. And, the Proposed Transaction may still not be in the public interest to the extent that it further entrenches management and provides additional barriers to the Foundation Shareholder's disposition of its Shares beyond those contained in the Stock Governance Agreements. Thus, the Commissioner may have an adequate record upon which to base a finding that the Poison Pill Plan is contrary to the public interest.

e. Excess Share Escrow Agent Agreement

The Excess Share Escrow Agreement is merely an agreement designed to ensure the performance of the Stock Governance Agreements, and has no significance as a stand-alone

³⁹⁸ STEWART M. LANDEFELD, ET AL., WASHINGTON CORPORATE LAW: CORPORATIONS AND LLCs § 13.17 (2002).

³⁹⁹ RCW 23B.08.300(1).

⁴⁰⁰ See STEWART M. LANDEFELD, ET AL., WASHINGTON CORPORATE LAW: CORPORATIONS AND LLCs § 8.4 (2002) (stating that "the two conventional concepts of the duty of care and the duty of loyalty [are] both . . . consistent with Section 23B.08.300, when analyzing the statutory language").

⁴⁰¹ See RONALD J. GILSON & BERNARD S. BLACK, THE LAW AND FINANCE OF CORPORATE ACQUISITIONS 741-42 (2d ed. 1995) (describing the terms of a rights plan, which are similar to PREMERA's proposal; the sample plan was prepared by Wachtell, Lipton, Rosen & Katz, the law firm that originated such plans).

agreement. Thus, the Excess Share Escrow Agreement, as a supplemental agreement to the other Stock Governance Agreements, is not in the public interest to the extent that those agreements are not in the public interest.

f. Indemnification Agreement

The Indemnification Agreement complies with Chapter 24.03 RCW and Title 23B RCW, but is not in the public interest. The Indemnification Agreement requires that the Foundation Shareholder indemnify New PREMERA for tax liabilities and other non-tax liabilities, including claims arising with respect to the status of PREMERA as a nonprofit corporation and ownership rights to PREMERA's assets relating to the consummation of the Transaction.⁴⁰² Unlike the BCBSA restrictions, the Indemnification Agreement is one that is imposed by PREMERA, and is not required by a third party. Moreover, no argument can be made as to the breadth of the liabilities for which the Foundation Shareholder is to indemnify New PREMERA (e.g., immediate tax consequences or futures consequences), because PREMERA has unequivocally expressed that the entire burden of these liabilities will be placed on the Foundation Shareholder.⁴⁰³ There is no reasonable justification that compels a finding that the Foundation Shareholder should indemnify PREMERA with respect to any potential tax consequences or other liabilities, especially because PREMERA is the applicant that has initiated this Transaction, and the Foundation Shareholder is unlikely to have any influence on the events potentially giving rise to a liability indemnifiable under the agreement. By law, the Foundation Shareholder is to receive fair market value.⁴⁰⁴ There is no provision under Washington law for the conversion of a nonprofit corporation to for-profit form. It is only through a series of formations of subsidiary for-profit corporations, dissolution of the nonprofit parent corporations, and the use of the Foundation Shareholder as a temporary, non-voting, shareholder of the new for-profit holding company, that PREMERA is able to accomplish its conversion. PREMERA's "plan of conversion" constitutes a *de facto* "financing" of the payment to the Foundation Shareholder of the fair market value, thereby allowing the business to continue as a going concern and hold an IPO. Assuming, *arguendo*, that PREMERA's "plan of conversion"

⁴⁰² See New PREMERA, Form A: Exhibit G-8, §§ 1(d), 2, 3 at 2-7 (Sept. 17, 2002) available at <http://www.insurance.wa.gov/special/premera/filing/ExhibitG-8.pdf> (listing and defining the liabilities for which the Foundation Shareholder would have to indemnify New PREMERA).

⁴⁰³ See PREMERA Answers Consultant Exhibit B Questions, at 0030092 (Feb. 10, 2003) (on file with C&B) (stating that PREMERA considers the scope of the Indemnification Agreement "to require the Foundation Shareholder to indemnify PREMERA from the potential loss of the I.R.C. § 833(b) deduction or other future tax liabilities as a result of the loss of an existing tax status").

⁴⁰⁴ RCW 24.03.225(3) ("Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, education or similar purposes . . . shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation"); cf. RCW § 70.45.070(5) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved unless the nonprofit corporation will receive fair market value for its assets).

otherwise complies with applicable law, such plan must be disapproved as against the public interest if it would place the Foundation Shareholder at unreasonable risk of not realizing, in cash, the fair market value.⁴⁰⁵ The Indemnification Agreement does create such an unreasonable risk.

Without the Indemnification Agreement, all of New PREMERA's shareholders will bear the burden of the potential tax liability equally. If pursuant to GAAP, the tax issues rise to a level of a contingent liability, then the entire value of New PREMERA's shares will be impacted in the IPO. If the tax liability is so speculative that customary business valuation methodology would not take it into account, then the value of the Shares will not be reduced. According to PREMERA, the potential liability does not rise to a level of a contingent liability. Yet, PREMERA has insisted on imposing this burden on the Foundation Shareholder. This provision has the effect of reducing materially the value of assets transferred to the Foundation Shareholder and the Charitable Organizations (by subjecting them to potentially material liability), such reduction precluding the transfer of fair market value to the public. Accordingly, the Commissioner would be justified in disapproving the Transaction as against the public interest.⁴⁰⁶

2. Dilution/IPO Discount

PREMERA asserts that the charitable assets are protected because the Foundation Shareholder will receive all of New PREMERA's outstanding shares. As PREMERA indicated, the price of a publicly-traded share of stock is generally based on earnings per share and price-to-earnings multiples, which are factors that can be quantified.⁴⁰⁷ In addition, PREMERA asserts that the value of the Shares will also be determined by the benefits that would be enjoyed by a public company as well as a strong past performance of other BCBS IPOs. Although this proposition may be true, PREMERA has not demonstrated that additional capital would improve its earnings or that the strong past performance of other companies has any bearing on PREMERA's performance. As Blackstone indicates, a transaction in which PREMERA expects to raise between \$100 million and \$150 million will result in a dilution of between 11 and 15 percent.⁴⁰⁸ On the other hand, an IPO of between \$25 million and \$75 million will result in a dilution of between three and eight percent. Substantial dilution in an IPO may result in fair market value not being transferred to the Foundation Shareholder. PREMERA does provide an alternate scenario in which projections are more optimistic resulting in only minimal dilution. However, as Blackstone notes, that calculation is

⁴⁰⁵ Cf. RCW § 70.45.070(6) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved if charitable funds will be placed at unreasonable risk through partial financing by the nonprofit corporation).

⁴⁰⁶ Cf. RCW 70.45.070(6) (providing that an acquisition of a nonprofit hospital by a for-profit entity may not be approved if charitable funds will be placed at unreasonable risk through partial financing by the nonprofit corporation).

⁴⁰⁷ IPO Analysis, at 0035347 (Apr. 25, 2003) (on file with C&B) [CONFIDENTIAL].

⁴⁰⁸ Blackstone Valuation and Fairness Report, *supra* note 35, at 27 [CONFIDENTIAL].

inaccurate because PREMERA compared the alternate model after an IPO to management's case rather than against the alternate model absent an IPO.⁴⁰⁹ Moreover, significant weight should not be given to the model because management does not have enough confidence in those projections to present them to potential investors.

In addition to the potential dilution of PREMERA's value, shares sold at the time of an IPO are, typically, discounted in order to facilitate a successful offering. Thus, the Foundation Shareholder will receive less cash in exchange for the shares it is forced to sell during the IPO. As Blackstone indicates, IPO discounts in precedent BCBSA conversions have averaged 28 percent and 32 percent for one-year and two-year forward P/E multiples, respectively.⁴¹⁰ [

PROPRIETARY MATERIAL REDACTED

] As a result of these discounts, *ceteris paribus*, the more shares that the Foundation Shareholder is forced to sell in the IPO, the less cash that it will receive for each of those shares. Therefore, the Foundation Shareholder should not be forced to sell a significant portion of the Shares at the IPO. For example, Blackstone demonstrates that stocks typically perform well in the aftermarket.⁴¹² Thus, the more shares sold at the IPO, the less shares the Foundation Shareholder will have to partake in the potential aftermarket "run-up" in the value of those shares sold at the IPO. Ultimately, the public interest is optimized if decisions regarding the Foundation Shareholder's disposition of the Shares are made independently by parties whose sole or principal concern is the interest of the Charitable Organizations.

V. PRELIMINARY CONCLUSIONS

C&B has been engaged to provide an analysis and opinion as to: (1) whether PREMERA has complied with the appropriate change of control filing requirements; (2) whether the Proposed Transaction is economically viable; (3) whether PREMERA has complied with applicable law, including the Washington Insurance Code, applicable WAC provisions, the Washington Nonprofit Corporation Act, and certain provisions of federal law; and (4) whether the Proposed Transaction is fair to policyholders, health care providers, and the public. C&B has also been asked to consider: (5) the potential conversion-related self-dealing and conflicts of interest of PREMERA's officers and directors; (6) the independence of the Foundation Shareholder and Charitable Organizations on the one hand, and PREMERA on the other hand; and (7) the stock transfer documents, and the related transfer of PREMERA's fair market value.

⁴⁰⁹ *Id.* at 28 [CONFIDENTIAL].

⁴¹⁰ *Id.* at 47 [CONFIDENTIAL].

⁴¹¹ *Id.* at 48 [CONFIDENTIAL].

⁴¹² *Id.* at 49 [CONFIDENTIAL].

1. **PREMERA has not complied fully with the appropriate change of control filing requirements.** Although PREMERA has provided a substantial amount of information, its Form A cannot be deemed complete until the deficiencies found by the Commissioner have been satisfied, which required timely submission of the stock ownership plans that New PREMERA intends to adopt, and the schedule of assets and liabilities it intends to transfer to PBC-AK.

In determining the identity of the applicant, PREMERA suggests, inappropriately, that the Disclaimer of Control filing is the mechanism which eliminates control. Whether or not control exists (or would exist if the Proposed Transaction were implemented) depends on the elements of the Transaction. The disclaimer can do no more than describe those elements. It cannot eliminate control created by the Transaction. Thus, an appropriate explanation for the suggested absence of control would cite to the Stock Governance Agreements and other organizational documents intended to eliminate the Foundation Shareholder's control of New PREMERA. Notably, by virtue of those same and related provisions, those agreements may prevent the transfer of PREMERA's fair market value to the Foundation Shareholder and Charitable Organizations. Conveyance of PREMERA's fair market value is the fundamental legal requirement for satisfaction of the public's stake in the company. It is evident, in any event, that PREMERA has designed the Proposed Transaction so that the Foundation Shareholder cannot exercise the authority and control typically inherent in the level of ownership proposed for the recipient entity. Therefore, whether or not the Stock Governance Agreements fail a fundamental legal requirement, for purposes of the public policies underlying the Holding Company Acts and other applicable law, New PREMERA should be treated as the acquiring person.

2. **The Proposed Transaction is not economically viable.** For purposes of C&B's Analysis, economic viability turns on whether the public's interest in PREMERA is safeguarded in the Proposed Transaction. In effect, that requires a determination as to whether the fair market value of PREMERA will be conveyed to the Foundation Shareholder and the Charitable Organizations and thereafter inure exclusively to the public benefit. Initially, economic viability involves the extent to which PREMERA will be able to complete a successful IPO, which depends on several factors including whether the company follows proper procedures in the IPO. However, there are several potential negative factors that may affect the economic viability of the IPO, as reported by Blackstone. Moreover, even a successful IPO properly conducted would not guarantee that the Transaction will be economically viable in the sense described here. A variety of stock restrictions and other conditions proposed by PREMERA to be imposed on the Foundation Shareholder are likely to reduce materially the value of the consideration received by it for eventual distribution to the Charitable Organizations. That reduction may result in the aggregate consideration falling so far short of PREMERA's fair market value that the applicable legal requirement will not have been met. Moreover, the pervasive control that PREMERA proposes to retain over the Foundation Shareholder presents a high probability that the assets conveyed will not inure exclusively to the benefit of the public.

3. **PREMERA has not complied with applicable law.** Under the Washington Insurance Code, the Commissioner must find none of the Holding Company Act's six adverse

criteria, the first two of which are: (1) after the change of control, the domestic health carrier would not be able to satisfy a domestic health carrier's registration requirements; or (2) there is substantial evidence that the acquisition would substantially lessen competition or tend to create a monopoly in insurance in Washington.⁴¹³

The first criterion for approval under the Holding Company Acts involves the licensing and registration requirements of PREMERA's health care service contractors and insurers without the need for the converted entities to file new licenses or registrations. The OIC has indicated that it will permit the licenses and registrations for the nonprofit companies to be transferred to the for-profit companies if the Transaction's other requirements are met, because there does not appear to be a material issue with respect to compliance with the underlying requirements.

The second criterion for approval involves the extent to which there is substantial evidence that the acquisition would substantially lessen competition or tend to create a monopoly in insurance in Washington. Although PREMERA has market power in Eastern Washington, there does not seem to be an antitrust violation as a result of the Transaction, because it does not appear that the Transaction will result in an immediate increase in market share. It is possible that access to additional capital will enable PREMERA to engage in anti-competitive behavior that would not have been possible without such capital. Nothing brought to C&B's attention indicates an intent by PREMERA to engage in such behavior. However, the need to satisfy investor expectations may induce PREMERA to increase premium rates or reduce provider compensation, either or both of which may have an adverse effect on the markets in which PREMERA operates.

Other applicable Washington Insurance Code provisions include whether PREMERA has complied with the applicable Form D requirements for certain material transactions in a holding company system between related entities, whether the insurance contracts of the current entities should be transferred to the converted entities, and whether solicitation permits have been provided. PREMERA's Form D appears to satisfy the applicable informational requirements. Moreover, PwC's analysis indicates that the Form D appears to satisfy the substantive requirements for the Cost Agreement and Management Agreement, because those agreements, as well as charges for services performed, do not appear to be unfair and unreasonable, and the expenses incurred and payments received apparently will be allocated according to customary statutory accounting practices consistently applied. The Tax Agreement, however, does not satisfy the foregoing legal standards because one of the provisions may result in members being reimbursed for certain tax attributes generated on a separate return basis. The transfer of insurance contracts between PBC and New PBC, and LifeWise of Washington and New LifeWise of Washington, should not be approved as contemplated in the Proposed Transaction in the absence of express adequate assurances that the transfer will not result in adverse changes in the terms or cost of coverage. The Proposed Transaction documents contain no such assurance. New PREMERA will be required to obtain

⁴¹³ The remaining four criteria for approval under the Holding Company Acts are discussed in the fourth conclusion.

solicitation permits for the IPO and subsequent financing which will have to be reviewed by the Commissioner to determine whether PREMERA has complied with applicable law. The proposed form for the application for these permits are not included as part of the Proposed Transaction documents, and C&B, therefore, cannot ascertain whether they will comply with applicable law.

The indemnification provisions for the indemnitees of the Foundation Shareholder and the Washington Charitable Organization are far broader than the statutory requirements contained in Titles 23 and 24 RCW. Even if permissible (a proposition that C&B does not believe is beyond debate), such broader protective measures for PREMERA's appointed directors of the Foundation Shareholder are certainly not mandatory. It is therefore appropriate that the Commissioner determine whether they are in the public interest. Moreover, certain bylaws of the Washington Charitable Organization conflict with each other, and the Foundation Shareholder's presumption of assent requirement does not comply with statutory requirements. The exemption of the Foundation Shareholder's management from the prudent person rule standard of conduct would be unnecessary and not in the public interest if it extended beyond the requirement that the Foundation Shareholder's assets be concentrated temporarily in New PREMERA stock. As currently written, PREMERA's and PBC's Plans of Distribution could be construed as suggesting that PBC does not hold any assets restricted to charitable, benevolent, or similar purposes, and do not require that those assets be used only for such purposes. Therefore, these documents are not in the public interest. In other respects, C&B has concluded that the various transfer of asset agreements would comply with applicable law. The primary applicable non-tax federal laws are The Clayton Act and its amendment, the HSR. Although PREMERA will have to submit an HSR filing to the DOJ and the FTC, The Clayton Act's substantive federal antitrust requirements probably do not apply to the Proposed Transaction, because PREMERA's market share immediately prior to, and after, the Transaction will be the same.

4. The Proposed Transaction may not be fair to policyholders, health care providers, and the public. The last four criteria for approval under the Holding Company Acts require that the Commissioner not find that: (1) the acquiring party's financial condition is such as might jeopardize the health carrier's financial stability or prejudice its subscribers' interest; (2) the plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to the health carrier's subscribers, and not in the public interest; (3) the competence, experience, and integrity of those persons who would control the health carrier's operations are such that it would not be in the interest of the health carrier's subscribers, and of the public, to permit the acquisition of control; or (4) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

As a result of the Transaction, PREMERA may lose the benefits of the I.R.C. § 833(b) federal income tax deduction. Although PREMERA currently has certain tax credits to offset such a loss, projections indicate that those credits would be exhausted by 2007. Moreover, although PREMERA's cash flow may not be altered, the lower "book" net income may affect adversely investor perception as to PREMERA profitability. PwC has determined that the risk of PREMERA

experiencing a "material change in structure" and attendant loss of tax benefits, is significant. Thus, approving the Transaction may not be in the public interest due to the potential negative financial impact to the company, policyholders, and public. Moreover, the level of "tax comfort" provided by E&Y is significantly lower than customary tax opinions with respect to a transaction of this magnitude. PREMERA will also face increased premium tax obligations in Alaska.

The fourth criteria for disapproval requires an analysis into whether the plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to the health carrier's subscribers, and not in the public interest. As a starting point, the standard by which this determination is to be made should be considered. Additionally, this factor focuses heavily on the public interest. Therefore, as a further preliminary step, an analysis of the meaning of "public interest" is appropriate using various principles of statutory construction, such as the ordinary meaning of the term, policy considerations, and the doctrine of *in pari materia*. The ordinary meaning of the terms and policy considerations reflect a balancing of interests. Moreover, in reviewing the Washington Nonprofit Hospital Conversion statutes, the doctrine of *in pari materia* further supports the assertion that significant weight should be afforded to the impact of the Proposed Transaction upon the health of the Washington public. As a practical matter and general proposition, in making a determination as to whether the Transaction is unfair and unreasonable to subscribers or policyholders, and not in the public interest, the Commissioner may elect to balance the Transaction's anticipated adverse consequences to the subscribers, policyholders, and the public with the Transaction's potential benefits. In due course, this factor of the Holding Company Acts requires an analysis of the impact of the Proposed Transaction on availability, accessibility, and affordability of health insurance, including potential negative financial impacts on subscribers, policyholders, and providers, and the consequences for uninsured and underinsured populations. This analysis also delves into greater detail into management's due diligence obligations.

Regarding the effect on the availability, accessibility, and affordability of health insurance, analysis is required as to whether PREMERA will be compelled to raise premiums or reduce provider costs. Premiums may rise as a result of shareholder pressure to improve profitability. On the other hand, provider compensation may be reduced to achieve the same result. PwC has analyzed the markets in which PREMERA operates and has determined that it has the market power to increase rates significantly in the individual and regulated small group markets. PwC's economic impact report shows that PREMERA has consistently fallen short of its target financial results. Shareholders may pressure management to improve profitability by increasing revenues or reducing costs. Premium rates could be a prime source for an increase in revenues, especially in areas where PREMERA has market power, and historically has not maximized the rates it could charge to subscribers while still remaining somewhat competitive. Moreover, the subscribers that would most be affected are individual and small group members, due to the greater ability to affect those markets. Based on PwC's economic impact analysis, the Commissioner has sufficient evidence on the record to support disapproval should he make a finding that the Transaction will cause a rise in

premium rates or a decline in provider payments, particularly in Eastern Washington, due to shareholder pressures.

As demonstrated by PwC, PREMERA will have the ability to increase premiums to achieve internal target returns, but will still underperform as compared to publicly-traded comparable companies. Assuming that PREMERA does indeed raise premiums due to shareholder pressures, PwC's model also shows that certain members will most probably be compelled to drop coverage, or new enrollment may decline. These consequences of the Proposed Transaction may cause an increase in the number of uninsureds, or reduce access to health insurance in the communities where PREMERA has market power. The Commissioner, therefore, has sufficient evidence on the record to disapprove the Proposed Transaction on this basis. Additionally, in areas such as rural Eastern Washington where PREMERA is functionally a single player, a particular concern is whether New PREMERA may leave the market if it cannot realize a sufficient return on investment.

In balancing the interests of the public, the Commissioner will be justified in giving little weight to PREMERA's implication that approving the Transaction will prevent premium increases, which otherwise might be necessary to raise capital, because such an implication does not have merit based on PREMERA's proposed uses of new capital. PREMERA's assertions that the Proposed Transaction will somehow provide a substantial benefit to the company, due to an improved RBC ratio or for technological expenditure, is also not very persuasive given the lack of evidence to prove these assertions. In fact, there exists significant evidence to the contrary. However, assuming the Commissioner finds that the Transaction produces negative effects to subscribers, policyholders, providers, or the public, then the Transaction should be disapproved, unless PREMERA demonstrates other countervailing positive effects. PREMERA's suggestion that the Foundation Shareholder and Charitable Organizations will provide benefits to offset the negative effects produced by the Transaction should be given little weight due to the lack of evidence provided by PREMERA.

PREMERA's outright rejection of some possible alternative transactions, such as merger, raises several potential problems. First, PREMERA's arguments in favor of becoming for-profit are less persuasive. Second, the board may not have met its due diligence duties. Third, PREMERA may have forever foregone the Foundation Shareholder's opportunity to receive a control premium. PREMERA does not appear to have satisfied its due diligence obligations in authorizing the Transaction, because it did not explore adequately the possibility of relying upon a possible merger to raise the desired capital. Its deliberation regarding alternatives to the Proposed Transaction were hampered by the imposition of artificial conditions, such as the imperative of retaining "local control." Moreover, it is possible that PREMERA could have postponed efforts to raise capital until its need was more fully developed and articulable. Additionally, PREMERA and its experts did not explore the amount of capital that could be generated through merger/sale with potential partners

that might have enabled PREMERA to pursue one of its core objectives, having a local presence.⁴¹⁴ Rather, management seems to have assumed, without conducting reasonable due diligence, that no such merger/sale candidate existed. By themselves, these weaknesses in PREMERA's due diligence may not compel rejection of the Proposed Transaction. However, they are an additional significant factor the Commissioner may consider in evaluating whether the Proposed Transaction is in the interest of policyholders and the public.

The public interest also requires a determination of whether any conflicts of interest or self-dealing existed, and whether fair market value would be transferred to the Washington public. This analysis is discussed in the next conclusion.

5. The Proposed Transaction presents potential conversion-related self-dealing and conflicts of interest of PREMERA's officers and trustees. PREMERA's consideration of management retention in determining whether to convert, if there was no apparent need, could raise the specter of a conflict of interest. There remains substantial debate as to the validity of PREMERA's assertion that the Proposed Transaction is needed to improve management retention. If the Commissioner's factual inquiry produces a conclusion that this was not in fact a compelling meritorious motive for the transaction, it will be important to ascertain whether benefits to management played a meaningful role. On October 17, 2003, PREMERA finally provided the contemplated executive compensation plans after nearly a year of requesting those plans. But the plans submitted only address benefits expected for the two years following the conversion. In any event, it will be necessary to determine whether anticipated management benefits present a conflict of interest of sufficient magnitude to make the Proposed Transaction contrary to the public interest. Due to PREMERA's failure to provide these plans prior to the October 15, 2003, deadline to amend the Form A, C&B and the other Consultants cannot express a conclusion as to whether, in this respect, PREMERA's management engaged in self-dealing, or as to whether there exists such a conflict of interest. Moreover, as discussed earlier, without sufficient time to review the completeness of PREMERA's submission, the Form A must still be deemed incomplete.

6. The Foundation Shareholder and Charitable Organizations would not be sufficiently independent from PREMERA. The Foundation Shareholder proposed in the first instance to receive the consideration for the public's stake is far from independent from PREMERA. Indeed, it is probable that the Foundation Shareholder will be subject to substantial influence or control by PREMERA and that, at least some of its activities will be conducted for PREMERA's benefit. The proposed inclusion of "Independent Directors" does not alter this conclusion because they will not in fact be independent, they will be PREMERA's nominees consisting

⁴¹⁴ It is notable that the Blue Cross industry remains in a state of flux. While certain recent conversions have been rejected or abandoned for a variety of reasons (such as those in Kansas, Maryland, the District of Columbia, Delaware, North Carolina, and New Jersey), consolidation among Blue Cross plans continues unabated. As this report goes to press, WellPoint and Anthem, the "giants" of the industry, have announced their intent to merge, creating the country's second largest health insurer. These developments illustrate in some measure the breadth of possibilities and call into question the merit of PREMERA's "stand-alone" strategy.

of: (1) PREMERA's, PBC's, or their predecessors' current or former Board members, or (2) individuals nominated by PREMERA and elected or appointed by a majority vote of the Independent Directors. The possibility that the Foundation Shareholder will lobby for certain health insurance regulatory issues creates the concern that the offices of the Foundation Shareholder will be utilized for PREMERA's benefit.⁴¹⁵

7. **Elements of the stock transfer documents undermine the transfer of PREMERA's fair market value.** The Stock Governance Agreements prevent the transfer of fair market value to the Foundation Shareholder. These agreements are as follows: (a) the Stock Restrictions Agreement; (b) the Voting Trust and Divestiture Agreement; (c) the Registration Rights Agreement; (d) the Stockholder Protection Rights Agreement; (e) the Excess Share Escrow Agreement; and (f) the Indemnification Agreement. Some of the more egregious restrictions have been identified, while Blackstone has supplemented this analysis with a review of various other terms as compared to prior transactions as a reference point. The Stock Restrictions Agreement indicates that an undetermined percentage of New PREMERA's shares will be conveyed to the Washington Charitable Organization and the Alaska Charitable Organization. PREMERA has, thus, not provided for the transfer of any value, much less fair market value. The Voting Trust and Divestiture Agreement propose to compel the Foundation Shareholder to divest its Shares according to a predetermined schedule over a five-year period, without regard to the effect of this schedule on the interests of the Foundation Shareholder or the Charitable Organizations. Typically, provisions that compel a stockholder to divest its shares pursuant to a predetermined schedule can have a negative effect on the value of that stock, because those shares are not freely tradeable. To that extent at least, such restrictions are not in the public interest. Moreover, the Foundation Shareholder will be required to transfer its voting rights in its Shares to New PREMERA, depriving it of any control over the company of which it will be the largest shareholder and which, at least initially, will be the Foundation Shareholder's and Charitable Organizations' largest asset. The proposed requirement that the Foundation Shareholder be liable, at least in part, for the expenses or compensation of the Trustee, and the obligation that it indemnify the Trustee, may be contrary to the interests of the Foundation Shareholder and the Charitable Organizations. The Trustee's services would not be required at all if PREMERA paid its fair market value to the Foundation Shareholder in cash on the effective date of the Transaction. Moreover, control of the Foundation Shareholder by PREMERA has the effect of requiring the public assets to indemnify PREMERA for its own conduct.

The lack of independence envisioned in the Registration Rights Agreement undermine the public interest to the extent that PREMERA retains effective control of such matters as pricing, underwriter discounts, commissions, and holdbacks. The proposed Purchase Option for PREMERA

⁴¹⁵ In meetings following the deadline for amending the Form A, PREMERA representatives expressed willingness to adopt remedial measures for these problems. However, no detail for such measures were provided, and PREMERA declined innumerable opportunities to address these concerns before the amendment deadline. C&B's report addresses the Proposed Transaction as described through that amendment deadline. Speculation as to how it might be improved in the future cannot serve as the basis for an evaluation of the Form A pending before the Commissioner.

deprives the Foundation Shareholder of investment flexibility to a degree that may further undermine the value of the stock ostensibly conveyed for the benefit of the public. In addition, the Stockholder Protection Rights Agreement may have the effect of entrenching management, contrary to the public interest. The Indemnification Agreement unfairly places the entire burden of potential tax consequences and other expenses, as a result of the Transaction, on the Foundation Shareholder. There is no reasonable justification for requiring that the Foundation Shareholder indemnify PREMERA with respect to any potential tax consequences. PREMERA is the applicant that has initiated this Transaction, and the Foundation Shareholder is unlikely to have any influence on the events potentially giving rise to a liability indemnifiable under the agreement. In addition to the Stock Governance Agreements, the IPO, as currently contemplated, will result in the significant dilution of the Shares. Moreover, the Foundation Shareholder will be compelled to absorb the IPO discount typically applied to shares sold in an IPO. In these respects, the Commissioner has sufficient evidence on the record to find that the Transaction does not convey fair market value and is not in the public interest.

In summary, the Form A presents a complex and pervasive Proposed Transaction, many of the results of which cannot be predicted with much certainty. This Final Report, and the reports of other consultants, identify many potential pitfalls. There are elements of the proposed conversion that are designed in a manner inherently contrary to the interests of the policyholders and the public. Other aspects of the Transaction create the possibility for such unfairness. Many of these issues have been brought to the attention of PREMERA's management throughout this process, but the applicant has elected to proceed with its proposal largely intact. Under the circumstances, C&B believes that the record presents ample indication that the Proposed Transaction, as currently structured, fails the applicable legal requirements and should be rejected.

C&B does not mean by this report to imply that PREMERA could not have proposed a conversion that would satisfy all applicable legal requirements. These observations apply only to the Transaction specifically proposed, which PREMERA consistently elected not to alter in response to previews of these comments. It is certainly possible that PREMERA could amend its Form A in a way that would be found by the Commissioner to address satisfactorily those of these conclusions as the result of which he might find that the Proposed Transaction must be rejected. It is not inappropriate to ponder why PREMERA has so steadfastly refused to amend its Form A long before this point in the process. This unwillingness is all the more startling in the face of PREMERA's subsequent indications that it would have been willing to adopt measures that might have eliminated many of the concerns outlined in this and other evaluations of the Proposed Transaction. This "litigation-style" tactic may leave the Commissioner no alternative but to reject this application, in turn putting PREMERA in the position of having to choose between: appealing the rejection, filing an improved application, or abandoning its plans. That it may find itself in that position is lamentable, because it was so easily avoidable.

APPENDIX I: DOCUMENT PRODUCTION LOG

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0000001	0000002	10/31/2002 0:00	Document Delivery Form providing response to request number 2 providing list of states where Premera companies have been qualified to do business
0000001	0000002	10/31/2002	Document Delivery Form providing response to request number 2 providing list of states where Premera companies have been qualified to do business
0000003	0000004	11/4/2002 0:00	Document Delivery Form providing response to request number 3 providing schedule of acquisitions, mergers, dispositions or other affiliations for November 1983 to present
0000003	0000004	11/4/2002	Document Delivery Form providing response to request number 3 providing schedule of acquisitions, mergers, dispositions or other affiliations for November 1983 to present
0000005			Document Delivery Form response to request WA 6 - providing copies of minutes dealing with conversion issue
0000005			Document Delivery Form response to request WA 6 - providing copies of minutes dealing with conversion issue
0000006	0000023	5/15/2002 0:00	Premera Board of Director Meeting Minutes
0000006	0000023	5/15/2002	Premera Board of Director Meeting Minutes
0000016			Document Delivery Form providing response to request number 11 providing copies of BCBSA licensing agreements as proprietary information
0000016			Document Delivery Form providing response to request number 11 providing copies of BCBSA licensing agreements as proprietary information
0000024	0000029	5/14/2002 0:00	Premera Special Meeting of the Board of Directors
0000024	0000029	5/14/2002	Premera Special Meeting of the Board of Directors
0000030	0000045	2/12/2002 0:00	Premera Board of Director Meeting Minutes
0000030	0000045	2/12/2002 0:00	Premera Board of Director Meeting Minutes
0000030	0000045	2/12/2002	Premera Board of Director Meeting Minutes
0000030	0000045	2/12/2002	Premera Board of Director Meeting Minutes
0000046	0000058	12/12/2001 0:00	Premera Board of Director Meeting Minutes
0000046	0000058	12/12/2001	Premera Board of Director Meeting Minutes
0000059	0000064	9/9/2001 0:00	Premera Board of Director Meeting Minutes
0000059	0000064	9/9/2001	Premera Board of Director Meeting Minutes
0000065	0000079	8/8/2001 0:00	Premera Board of Director Meeting Minutes
0000065	0000079	8/8/2001	Premera Board of Director Meeting Minutes
0000080	0000097	5/9/2001 0:00	Premera Board of Director Meeting Minutes
0000080	0000097	5/9/2001	Premera Board of Director Meeting Minutes
0000098	0000108	2/12/2002 0:00	Premera Governance Committee Meeting Minutes
0000098	0000108	2/12/2002	Premera Governance Committee Meeting Minutes
0000109	0000111	1/23/2002 0:00	Premera Governance Committee Meeting Minutes
0000109	0000111	1/23/2002	Premera Governance Committee Meeting Minutes
0000112	0000115	11/4/2002 0:00	Document Delivery Form providing response to request number 9 providing exhibit listing and describing all intercompany agreements currently in effect or entered into or effective after 1/1/97 and not in effect today.

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0000112	0000115	11/4/2002	Document Delivery Form providing response to request number 9 providing exhibit listing and describing all intercompany agreements currently in effect or entered into or effective after 1/1/97 and not in effect today.
0000116			Document Delivery Form providing response to request 11 - providing copies of the Blue Shield and Blue Cross License Agreements
0000116			Document Delivery Form providing response to request 11 - providing copies of the Blue Shield and Blue Cross License Agreements
0000117	0000204		Blue Shield License Agreement not signed
0000117	0000204		Blue Shield License Agreement not signed
0000205	0000292	3/14/2002 0:00	Blue Cross License Agreement not signed
0000205	0000292	3/14/2002	Blue Cross License Agreement not signed
0000293		10/31/2002 0:00	Document Delivery Form providing response to request number 14 providing copies of most recent articles of incorporation and bylaws for each company
0000293		10/31/2002	Document Delivery Form providing response to request number 14 providing copies of most recent articles of incorporation and bylaws for each company
0000294	0000317	10/8/2002 0:00	Amended and Restated Bylaws of Premera
0000294	0000317	10/8/2002	Amended and Restated Bylaws of Premera
0000318	0000323	6/30/1998 0:00	Restated Articles of Incorporation of Premera
0000318	0000323	6/30/1998	Restated Articles of Incorporation of Premera
0000324	0000345	10/8/2002 0:00	Amended and Restated Bylaws of Premera Blue Cross
0000324	0000345	10/8/2002	Amended and Restated Bylaws of Premera Blue Cross
0000346	0000352	6/30/1998 0:00	Restated Articles of Incorporation of Premera Blue Cross
0000346	0000352	6/30/1998	Restated Articles of Incorporation of Premera Blue Cross
0000353	0000362	1/18/2000 0:00	Articles of Amendment to Articles of Incorporation of PremeraFirst, Inc.
0000353	0000362	1/18/2000	Articles of Amendment to Articles of Incorporation of PremeraFirst, Inc.
0000363	0000385	4/26/1999 0:00	PremeraFirst, Inc. Resolution adopted by Shareholder Amending Bylaws
0000363	0000385	4/26/1999	PremeraFirst, Inc. Resolution adopted by Shareholder Amending Bylaws
0000386	0000405	10/10/2001 0:00	Amended Bylaws of N.C.A.S. Northwest, Inc. and Amendment dated 10/01/01 amending section 3.2
0000386	0000405	10/10/2001	Amended Bylaws of N.C.A.S. Northwest, Inc. and Amendment dated 10/01/01 amending section 3.2
0000406	0000417	3/6/2000 0:00	Articles of Amendment to the Restated Articles of Incorporation of N.C.A.S. Northwest, Inc.
0000406	0000417	3/6/2000	Articles of Amendment to the Restated Articles of Incorporation of N.C.A.S. Northwest, Inc.
0000418	0000429	1/18/2000 0:00	Articles of Amendment to Restated Articles of Incorporation of Washington-Alaska Group Services, Inc.
0000418	0000429	1/18/2000	Articles of Amendment to Restated Articles of Incorporation of Washington-Alaska Group Services, Inc.
0000430	0000447	3/29/1989 0:00	Amended Bylaws of Washington-Alaska Group Services, Inc.
0000430	0000447	3/29/1989	Amended Bylaws of Washington-Alaska Group Services, Inc.
0000448	0000462	9/1/2000 0:00	Bylaws of Quality Solutions

10/17/2003

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PREMERA DOCUMENT LOG

Doc#	Doc Title	Doc Date	Doc Bates
0000448	Bylaws of Quality Solutions	9/1/2000	0000462
0000463	Articles of Incorporation of Quality Solutions	8/30/2000 0:00	0000473
0000463	Articles of Incorporation of Quality Solutions	8/30/2000	0000473
0000474	Articles of Amendment to the Restated Articles of Incorporation of States West Life Insurance Company	2/8/2000 0:00	0000483
0000474	Articles of Amendment to the Restated Articles of Incorporation of States West Life Insurance Company	2/8/2000	0000483
0000484	Amended Bylaws of States West Life Insurance Company	3/29/1989 0:00	0000501
0000484	Amended Bylaws of States West Life Insurance Company	3/29/1989	0000501
0000502	Articles of Amendment of Articles of Incorporation of Premera Likewise Health Plan	7/11/2002 0:00	0000508
0000502	Articles of Amendment of Articles of Incorporation of Premera Likewise Health Plan	7/11/2002	0000508
0000509	Amended and Restated Bylaws of Premera Healthcare	8/3/2000 0:00	0000523
0000509	Amended and Restated Bylaws of Premera Healthcare	8/3/2000	0000523
0000524	Articles of Incorporation of Likewise Administrators, Inc.	6/27/2002 0:00	0000528
0000524	Articles of Incorporation of Likewise Administrators, Inc.	6/27/2002	0000528
0000529	Bylaws of Likewise Administrators, Inc.	6/27/2002 0:00	0000543
0000529	Bylaws of Likewise Administrators, Inc.	6/27/2002	0000543
0000544	Articles of Amendment to the Restated Articles of Incorporation of MSC Life Insurance Company	1/19/2000 0:00	0000553
0000544	Articles of Amendment to the Restated Articles of Incorporation of MSC Life Insurance Company	1/19/2000	0000553
0000554	Bylaws of MSC Life Insurance Company	6/1/1992 0:00	0000571
0000554	Bylaws of MSC Life Insurance Company	6/1/1992	0000571
0000572	Articles of Incorporation of Likewise, A Premera Health Plan, Inc.	5/5/1994 0:00	0000587
0000572	Articles of Incorporation of Likewise, A Premera Health Plan, Inc.	5/5/1994	0000587
0000588	Amended and Restated Bylaws of Likewise, A Premera Health Plan, Inc.	10/24/1994 0:00	0000630
0000588	Amended and Restated Bylaws of Likewise, A Premera Health Plan, Inc.	10/24/1994	0000630
0000631	Document Delivery Form providing response to request number 15 providing copy of Articles of dissolution and plans of dissolution for Likewise dated 10/24/02	10/30/2002 0:00	0000649
0000631	Document Delivery Form providing response to request number 15 providing copy of Articles of dissolution and plans of dissolution for Likewise dated 10/24/02	10/30/2002	0000649
0000650	Document Delivery Forms for Audited Financial Statements for years 1997 through 2001 and Annual Statements for years 1997 through 2001 as public records responsive to request 20	10/30/2002 0:00	0000651
0000650	Document Delivery Forms for Audited Financial Statements for years 1997 through 2001 and Annual Statements for years 1997 through 2001 as public records responsive to request 20	10/30/2002	0000651
0000650.1	Document Delivery Form providing response to request 19 - stating that Exhibit H-1 Financial statements of Applicant and its affiliates have already been provided	11/1/2002 0:00	0000650.1
0000650.1	Document Delivery Form providing response to request 19 - stating that Exhibit H-1 Financial statements of Applicant and its affiliates have already been provided	11/1/2002	0000650.1

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0000652	0000678	3/6/1998 0:00	Financial Statements and other selected statutory - basis financial data for Likewise, A Premera Health Plan, Inc. for years ended 12/31/97 and 12/31/96
0000652	0000678	3/6/1998	Financial Statements and other selected statutory - basis financial data for Likewise, A Premera Health Plan, Inc. for years ended 12/31/97 and 12/31/96
0000679	0000706	2/19/1999 0:00	Financial Statements and other selected statutory - Basis financial data for Likewise, A Premera Health Plan, Inc. for years ended 12/31/98 and 12/31/97
0000679	0000706	2/19/1999	Financial Statements and other selected statutory - Basis financial data for Likewise, A Premera Health Plan, Inc. for years ended 12/31/98 and 12/31/97
0000707	0000734	2/28/2001 0:00	Financial Statements and other selected statutory - Basis financial data for Likewise, A Premera Health Plan, Inc. for years ended 12/31/00 and 12/31/99
0000707	0000734	2/28/2001	Financial Statements and other selected statutory - Basis financial data for Likewise, A Premera Health Plan, Inc. for years ended 12/31/00 and 12/31/99
0000735	0000779	3/1/2002 0:00	Financial Statements and other selected statutory - Basis financial data for Likewise, A Premera Health Plan, Inc. for years ended 12/31/01 and 12/31/00
0000735	0000779	3/1/2002	Financial Statements and other selected statutory - Basis financial data for Likewise, A Premera Health Plan, Inc. for years ended 12/31/01 and 12/31/00
0000780	0000825	3/1/2002 0:00	Financial Statements and other selected statutory - Basis financial data for Likewise, A Premera Health Plan, Inc. for years ended 12/31/01 and 12/31/00
0000780	0000825	3/1/2002	Financial Statements and other selected statutory - Basis financial data for Likewise, A Premera Health Plan, Inc. for years ended 12/31/01 and 12/31/00
0000826	0000854	3/6/1998 0:00	Financial Statements and other selected statutory - Basis financial data for States West Life Insurance Co. for years ended 12/31/97 and 12/31/96
0000826	0000854	3/6/1998	Financial Statements and other selected statutory - Basis financial data for States West Life Insurance Co. for years ended 12/31/97 and 12/31/96
0000855	0000885	2/19/1999 0:00	Financial Statements and other selected statutory - Basis financial data for States West Life Insurance Co. for years ended 12/31/98 and 12/31/97
0000855	0000885	2/19/1999	Financial Statements and other selected statutory - Basis financial data for States West Life Insurance Co. for years ended 12/31/98 and 12/31/97
0000886	0000916	2/28/2001 0:00	Financial Statements and other selected statutory - Basis financial data for States West Life Insurance Co. for years ended 12/31/00 and 12/31/99
0000886	0000916	2/28/2001	Financial Statements and other selected statutory - Basis financial data for States West Life Insurance Co. for years ended 12/31/00 and 12/31/99
0000917	0000969	3/1/2002 0:00	Financial Statements and other selected statutory - Basis financial data for States West Life Insurance Co. for years ended 12/31/01 and 12/31/00
0000917	0000969	3/1/2002	Financial Statements and other selected statutory - Basis financial data for States West Life Insurance Co. for years ended 12/31/01 and 12/31/00
0000970	0000992	3/6/1998 0:00	Financial Statements and other selected statutory - Basis financial data for MSC Life Insurance Co. for years ended 12/31/97 and 12/31/96
0000970	0000992	3/6/1998	Financial Statements and other selected statutory - Basis financial data for MSC Life Insurance Co. for years ended 12/31/97 and 12/31/96

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Appendix 1 - Premera Document Log

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0000993	0001015	2/19/1999 0:00	Financial Statements and other selected statutory - Basis financial data for MSC Life Insurance Co. for years ended 12/31/98 and 12/31/97
0000993	0001015	2/19/1999	Financial Statements and other selected statutory - Basis financial data for MSC Life Insurance Co. for years ended 12/31/98 and 12/31/97
0001016	0001039	2/28/2001 0:00	Financial Statements and other selected statutory - Basis financial data for MSC Life Insurance Co. for years ended 12/31/00 and 12/31/99
0001016	0001039	2/28/2001	Financial Statements and other selected statutory - Basis financial data for MSC Life Insurance Co. for years ended 12/31/00 and 12/31/99
0001040	0001078	3/1/2002 0:00	Financial Statements and other selected statutory - Basis financial data for MSC Life Insurance Co. for years ended 12/31/01 and 12/31/00
0001040	0001078	3/1/2002	Financial Statements and other selected statutory - Basis financial data for MSC Life Insurance Co. for years ended 12/31/01 and 12/31/00
0001079	0001095	2/19/1999 0:00	Financial Statements - Statutory Basis for Premera HealthPlus for years ended 12/31/98 and 12/31/97
0001079	0001095	2/19/1999	Financial Statements - Statutory Basis for Premera HealthPlus for years ended 12/31/98 and 12/31/97
0001096	0001142	12/31/1997 0:00	Annual Statement of HealthPlus
0001096	0001142	12/31/1997	Annual Statement of HealthPlus
0001143	0001215	12/31/1998 0:00	Annual Statement of Premera HealthPlus
0001143	0001215	12/31/1998	Annual Statement of Premera HealthPlus
0001216	0001295	12/31/1999 0:00	Annual Statement of Premera HealthPlus
0001216	0001295	12/31/1999	Annual Statement of Premera HealthPlus
0001296	0001319	12/31/2000 0:00	Annual Statement of Premera Healthcare
0001296	0001319	12/31/2000	Annual Statement of Premera Healthcare
0001320	0001402	12/31/2001 0:00	Annual Statement of Premera Likewise Health Plan
0001320	0001402	12/31/2001	Annual Statement of Premera Likewise Health Plan
0001403	0001518	12/31/1997 0:00	Annual Statement of Medical Service Corporation of Eastern Washington
0001403	0001518	12/31/1997	Annual Statement of Medical Service Corporation of Eastern Washington
0001519	0001627	12/31/1997 0:00	Annual Statement of States West Life Insurance Company
0001519	0001627	12/31/1997	Annual Statement of States West Life Insurance Company
0001628	0001736	12/31/1998 0:00	Annual Statement of States West Life Insurance Company
0001628	0001736	12/31/1998	Annual Statement of States West Life Insurance Company
0001737	0001849	12/31/1999 0:00	Annual Statement of States West Life Insurance Company
0001737	0001849	12/31/1999	Annual Statement of States West Life Insurance Company
0001850	0001959	12/31/2000 0:00	Annual Statement of States West Life Insurance Company
0001850	0001959	12/31/2000	Annual Statement of States West Life Insurance Company
0001960	0002074	12/31/2001 0:00	Annual Statement of States West Life Insurance Company
0001960	0002074	12/31/2001	Annual Statement of States West Life Insurance Company
0002075	0002263	12/31/1997 0:00	Annual Statement of Premera Blue Cross of Washington & Alaska of Mountlake Terrace
0002075	0002263	12/31/1997	Annual Statement of Premera Blue Cross of Washington & Alaska of Mountlake Terrace

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PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0002264	0002504	12/31/1998 0:00	Annual Statement of Premera Blue Cross of Mountlake Terrace
0002264	0002504	12/31/1998	Annual Statement of Premera Blue Cross of Mountlake Terrace
0002505	0002803	12/31/1999 0:00	Annual Statement of Premera Blue Cross of Mountlake Terrace
0002505	0002803	12/31/1999	Annual Statement of Premera Blue Cross of Mountlake Terrace
0002804	0003107	12/31/2000 0:00	Annual Statement of Premera Blue Cross of Mountlake Terrace
0002804	0003107	12/31/2000	Annual Statement of Premera Blue Cross of Mountlake Terrace
0003108	0003293	12/31/2001 0:00	Annual Statement of Premera Blue Cross of Mountlake Terrace
0003108	0003293	12/31/2001	Annual Statement of Premera Blue Cross of Mountlake Terrace
0003294	0003385	12/31/1997 0:00	Annual Statement of Premera Blue Cross of Mountlake Terrace
0003294	0003385	12/31/1997	Annual Statement of Premera Blue Cross of Mountlake Terrace
0003386	0003484	12/31/1998 0:00	Annual Statement of MSC Life Insurance Co.
0003386	0003484	12/31/1998	Annual Statement of MSC Life Insurance Co.
0003485	0003575	12/31/1998	Annual Statement of MSC Life Insurance Co.
0003485	0003575	12/31/2009 0:00	Annual Statement of MSC Life Insurance Co.
0003576	0003660	12/31/2009	Annual Statement of MSC Life Insurance Co.
0003576	0003660	12/31/2000 0:00	Annual Statement of MSC Life Insurance Co.
0003662	0003747	12/31/2000	Annual Statement of MSC Life Insurance Co.
0003662	0003747	12/31/2001 0:00	Annual Statement of MSC Life Insurance Company
0003748	0003854	12/31/2001	Annual Statement of MSC Life Insurance Company
0003748	0003854	12/31/1997 0:00	Annual Statement of Likewise, A Premera Health Plan, Inc.
0003855	0003961	12/31/1997	Annual Statement of Likewise, A Premera Health Plan, Inc.
0003855	0003961	12/31/1997	Annual Statement of Likewise, A Premera Health Plan, Inc.
0003962	0004058	12/31/1998 0:00	Annual Statement of Likewise, A Premera Health Plan, Inc.
0003962	0004058	12/31/1998	Annual Statement of Likewise, A Premera Health Plan, Inc.
0004059	0004159	12/31/1999 0:00	Annual Statement of Likewise, A Premera Health Plan, Inc.
0004059	0004159	12/31/1999	Annual Statement of Likewise, A Premera Health Plan, Inc.
0004160	0004256	12/31/2000 0:00	Annual Statement of Likewise, A Premera Health Plan, Inc.
0004160	0004256	12/31/2000	Annual Statement of Likewise, A Premera Health Plan, Inc.
0004257		12/31/2002 0:00	Annual Statement of Likewise, A Premera Health Plan, Inc.
0004257		10/31/2002 0:00	Document Delivery Form responding to request number 21 - providing Management Discussion & Analysis forms for all Premera affiliates
0004258	0004260	10/31/2002	Document Delivery Form responding to request number 21 - providing Management Discussion & Analysis forms for all Premera affiliates
0004258	0004260	12/31/1997 0:00	Managements Discussion and Analysis Supplement to 1997 annual statement of Medical Service Corporation of Eastern Washington
0004261	0004263	12/31/1997	Managements Discussion and Analysis Supplement to 1997 annual statement of Medical Service Corporation of Eastern Washington
0004261	0004263	12/31/1997 0:00	Managements Discussion and Analysis Supplement to 1997 annual statement of Blue Cross of Washington & Alaska
0004261	0004263	12/31/1997	Managements Discussion and Analysis Supplement to 1997 annual statement of Blue Cross of Washington & Alaska

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Beg Bates	End Bates	Document Date	Title
0004264	0004267	12/31/1998 0:00	Managements Discussion and Analysis Supplement to 1998 annual statement of Premera Blue Cross
0004264	0004267	12/31/1998	Managements Discussion and Analysis Supplement to 1998 annual statement of Premera Blue Cross
0004268	0004271	12/31/1999 0:00	Managements Discussion and Analysis Supplement to 1999 annual statement of Premera Blue Cross
0004268	0004271	12/31/1999	Managements Discussion and Analysis Supplement to 1999 annual statement of Premera Blue Cross
0004272	0004273	12/31/2000 0:00	Managements Discussion and Analysis Supplement to 2000 annual statement of Premera Blue Cross
0004272	0004273	12/31/2000	Managements Discussion and Analysis Supplement to 2000 annual statement of Premera Blue Cross
0004274	0004275	12/31/2001 0:00	Managements Discussion and Analysis Supplement to 2001 annual statement of Premera Blue Cross
0004274	0004275	12/31/2001	Managements Discussion and Analysis Supplement to 2001 annual statement of Premera Blue Cross
0004276	0004277	12/31/1997 0:00	Managements Discussion and Analysis Supplement to 1997 annual statement of MSC Life Insurance Company
0004276	0004277	12/31/1997	Managements Discussion and Analysis Supplement to 1997 annual statement of MSC Life Insurance Company
0004278	0004281	12/31/1998 0:00	Managements Discussion and Analysis Supplement to 1998 annual statement of MSC Life Insurance Company
0004278	0004281	12/31/1998	Managements Discussion and Analysis Supplement to 1998 annual statement of MSC Life Insurance Company
0004282	0004283	12/31/1999 0:00	Managements Discussion and Analysis Supplement to 1999 annual statement of MSC Life Insurance Company
0004282	0004283	12/31/1999	Managements Discussion and Analysis Supplement to 1999 annual statement of MSC Life Insurance Company
0004284	0004285	12/31/2000 0:00	Managements Discussion and Analysis Supplement to 2000 annual statement of MSC Life Insurance Company
0004284	0004285	12/31/2000	Managements Discussion and Analysis Supplement to 2000 annual statement of MSC Life Insurance Company
0004286	0004287	12/31/2001 0:00	Managements Discussion and Analysis Supplement to 2001 annual statement of MSC Life Insurance Company
0004286	0004287	12/31/2001	Managements Discussion and Analysis Supplement to 2001 annual statement of MSC Life Insurance Company
0004288	0004290	12/31/1997 0:00	Managements Discussion and Analysis Supplement to 1997 annual statement of HealthPlus
0004288	0004290	12/31/1997	Managements Discussion and Analysis Supplement to 1997 annual statement of HealthPlus
0004291	0004292	12/31/1998 0:00	Managements Discussion and Analysis Supplement to 1998 annual statement of Premera HealthPlus

PREMERA DOCUMENT LOG

Doc#	Doc Title	Doc Date	Doc Description
0004291	0004292	12/31/1998	Managements Discussion and Analysis Supplement to 1998 annual statement of Premera HealthPlus
0004293	0004294	12/31/1999 0:00	Managements Discussion and Analysis Supplement to 1999 annual statement of Premera HealthPlus
0004293	0004294	12/31/1999	Managements Discussion and Analysis Supplement to 1999 annual statement of Premera HealthPlus
0004295	0004297	12/31/1997 0:00	Managements Discussion and Analysis Supplement to 1997 annual statement of States West Life Insurance Company
0004295	0004297	12/31/1997	Managements Discussion and Analysis Supplement to 1997 annual statement of States West Life Insurance Company
0004298	0004301	12/31/1998 0:00	Managements Discussion and Analysis Supplement to 1998 annual statement of States West Life Insurance Company
0004298	0004301	12/31/1998	Managements Discussion and Analysis Supplement to 1998 annual statement of States West Life Insurance Company
0004302	0004304	12/31/1999 0:00	Managements Discussion and Analysis Supplement to 1999 annual statement of States West Life Insurance Company
0004302	0004304	12/31/1999	Managements Discussion and Analysis Supplement to 1999 annual statement of States West Life Insurance Company
0004305	0004307	12/31/2000 0:00	Managements Discussion and Analysis Supplement to 2000 annual statement of States West Life Insurance Company
0004305	0004307	12/31/2000	Managements Discussion and Analysis Supplement to 2000 annual statement of States West Life Insurance Company
0004308	0004309	12/31/2001 0:00	Managements Discussion and Analysis Supplement to 2001 annual statement of States West Life Insurance Company
0004308	0004309	12/31/2001	Managements Discussion and Analysis Supplement to 2001 annual statement of States West Life Insurance Company
0004310	0004312	12/31/1997 0:00	Managements Discussion and Analysis Supplement to 1997 annual statement of States West Life Insurance Company
0004310	0004312	12/31/1997	Managements Discussion and Analysis Supplement to 1997 annual statement of States West Life Insurance Company
0004313	0004316	12/31/1998 0:00	Managements Discussion and Analysis Supplement to 1998 annual statement of States West Life Insurance Company
0004313	0004316	12/31/1998	Managements Discussion and Analysis Supplement to 1998 annual statement of States West Life Insurance Company
0004317	0004319	12/31/1999 0:00	Managements Discussion and Analysis Supplement to 1999 annual statement of States West Life Insurance Company
0004317	0004319	12/31/1999	Managements Discussion and Analysis Supplement to 1999 annual statement of States West Life Insurance Company
0004320	0004322	12/31/2002 0:00	Managements Discussion and Analysis Supplement to 2000 annual statement of States West Life Insurance Company

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Beg Date	End Date	Document Date	Title
0004320	0004322	12/31/2002	Managements Discussion and Analysis Supplement to 2000 annual statement of States West Life Insurance Company
0004323	0004324	12/31/2001 0:00	Managements Discussion and Analysis Supplement to 2001 annual statement of States West Life Insurance Company
0004323	0004324	12/31/2001	Managements Discussion and Analysis Supplement to 2001 annual statement of States West Life Insurance Company
0004325		12/31/2000 0:00	Managements Discussion and Analysis Supplement to 2000 annual statement of Premera Healthcare
0004325		12/31/2000	Managements Discussion and Analysis Supplement to 2000 annual statement of Premera Healthcare
0004326	0004327	12/31/2001 0:00	Managements Discussion and Analysis Supplement to 2001 annual statement of Premera Likewise Health Plan
0004326	0004327	12/31/2001	Managements Discussion and Analysis Supplement to 2001 annual statement of Premera Likewise Health Plan
0004328	0004331	12/31/1998 0:00	Supplemental Compensation Exhibit for Premera Blue Cross for years 1998 - 2001
0004328	0004331	12/31/1998	Supplemental Compensation Exhibit for Premera Blue Cross for years 1998 - 2001
0004333	0004335	12/31/1998 0:00	Supplemental Compensation Exhibit for MSC Life Insurance Company for years 1998 - 2001
0004336	0004337	12/31/1998 0:00	Supplemental Compensation Exhibit for Premera Health plus for years 1998 - 1999
0004338	0004341	12/31/1998 0:00	Supplemental Compensation Exhibit for States West Life Insurance Company for years 1998 - 2001
0004342	0004345	12/31/1997 0:00	Supplemental Compensation Exhibit for Likewise, A Premera Health Plan for years 1997 - 2001
0004346		12/31/2001 0:00	Supplemental Compensation Exhibit for Likewise Health Plan of Oregon
0004347		12/31/2000 0:00	Supplemental Compensation Exhibit for Premera Healthcare
0004348		12/31/2001 0:00	Supplemental Compensation Exhibit for Premera Likewise Health Plan
0004349		11/1/2002 0:00	Document Delivery Form responding to request number 22 - providing quarterly statements for Premera affiliates
0004350	0004406	6/30/2002 0:00	Quarterly Statement of Premera Blue Cross
0004407	0004431	6/30/2002 0:00	Quarterly Statement of MSC Life Insurance Company
0004432	0004457	6/30/2002 0:00	Quarterly Statement of States West Life Insurance Company
0004458	0004486	6/30/2002 0:00	Quarterly Statement of Likewise Health Plan of Oregon, Inc.
0004487	0004513	6/30/2002 0:00	Quarterly Statement of Premera Likewise Health Plan
0004514		11/1/2002 0:00	Document delivery form in response to request number 27 - Balance sheet, income statement, cash flow statement and analysis of operations by line of business for Blue Cross Washington and Alaska and Medical Service Corp., can be found in annual statutory statements
0004516	0004519	12/31/2001 0:00	Premera Blue Cross Management Discussion and Analysis for years ended 12/31/01 and 12/31/00
0005279	0005348	2/4/2000 0:00	Senior Management's Financial & Operational Review for December 1999
0006075	0006145	2/9/2001 0:00	Officer's Financial & Operational Review for December 31, 2000
0006750	0006808	2/8/2002 0:00	Officer's Financial & Operational Review for December 31, 2001
0007220	0007283	10/1/2002 0:00	Officer's Financial & Operational Review for August 31, 2002
0007284		10/30/2002 0:00	Document delivery form for response to question 29 - Item is not applicable

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Req Bates	End Bates	Document Date	Title
0007285		10/29/2002 0:00	Document Delivery Form for response to request number 30 providing external auditor's management
0007286	0007297	3/1/2002 0:00	Letter with management response for years 1999 - 2001
0007298	0007310		Management letter and response for Premera for year end 2001
0007311	0007317	2/29/2000 0:00	Management letter and response for year end 2000
			Document Delivery form providing response to request number 31 - Providing copy of external auditor's summary of unadjusted differences in conjunction with 12/31/01 audit.
0007318	0007321	10/29/2002 0:00	Document Delivery Form with response to request to number 32, providing charts of 2001 and 2002
0007322	0007324	10/28/2002 0:00	Internal Audit Report Index. Form claims charts are proprietary information
			Document Delivery Form for response to request number 33 - states that access to independent auditor's working papers requires 1 week notice so files can be pulled from offsite. Files must be viewed in Ernst & Young's downtown Seattle office and hold harmless letters must be signed by consultants beforehand.
0007325		10/30/2002 0:00	Document Delivery Form for response to request number 36 - Premera and its subsidiaries currently, and historically, do not utilize any significant permitted statutory accounting practices.
0007326		10/30/2002 0:00	Document Delivery Form for response to request number 38 providing NAIC IRIS Ratio results for years 1997 through 2001 as public records
0007327		10/30/2002 0:00	States West Life Insurance Company Life IRIS Ratios for 1998
0007328	0007330	12/31/1998 0:00	States West Life Insurance Company Life IRIS Ratios for 1999
0007331	0007333	12/31/1999 0:00	States West Life Insurance Company Life IRIS Ratios for 2000
0007334	0007336	12/31/2000 0:00	States West Life Insurance Company Life IRIS Ratios for 2001
0007337	0007340	12/31/2001 0:00	Likewise, A Premera HealthPlan, Inc. Life IRIS Ratios for 1999
0007341	0007343	12/31/1999 0:00	Likewise, A Premera HealthPlan, Inc. Life IRIS Ratios for 2000
0007344	0007346	12/31/2000 0:00	MSC Life Insurance Company Life IRIS Ratios for 1997
0007347	0007350	12/31/1997 0:00	MSC Life Insurance Company Life IRIS Ratios for 1998
0007351	0007353	12/31/1998 0:00	MSC Life Insurance Company Life IRIS Ratios for 1999
0007354	0007356	12/31/1999 0:00	MSC Life Insurance Company Life IRIS Ratios for 2000
0007357	0007359	12/31/2000 0:00	MSC Life Insurance Company Life IRIS Ratios for 2001
0007360	0007363	12/31/2001 0:00	Document Delivery Form for response to request 39 providing that NAIC Risk-Based Capital calculations produced are considered proprietary information.
0007364		10/30/2002 0:00	NAIC Risk-Based Capital for Premera Blue Cross
0007365	0007391	12/31/1998 0:00	NAIC Risk-Based Capital for Premera Blue Cross
0007392	0007413	12/31/1999 0:00	NAIC Risk-Based Capital for Premera Blue Cross
0007414	0007444	12/31/2000 0:00	NAIC Risk-Based Capital for Premera Blue Cross
0007445	0007473	12/31/2001 0:00	NAIC Risk-Based Capital for MSC Life Insurance Company
0007474	0007511	12/31/1997 0:00	NAIC Risk-Based Capital for MSC Life Insurance Company
0007512	0007560	12/31/1998 0:00	NAIC Risk-Based Capital for MSC Life Insurance Company
0007561	0007620	12/31/1999 0:00	NAIC Risk-Based Capital for MSC Life Insurance Company
0007621	0007668	12/31/2000 0:00	NAIC Risk-Based Capital for MSC Life Insurance Company
0007669	0007705	12/31/2001 0:00	NAIC Risk-Based Capital for MSC Life Insurance Company
0007706	0007736	12/31/1998 0:00	NAIC Risk-Based Capital for Premera HealthPlus

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Beg Bates	End Bates	Document Date	Title
0007737	0007759	12/31/1999 0:00	NAIC Risk-Based Capital for Premera HealthPlus
0007760	0007808	12/31/1998 0:00	NAIC Risk-Based Capital for States West Life Insurance Company
0007809	0007859	12/31/1999 0:00	NAIC Risk-Based Capital for States West Life Insurance Company
0007860	0007910	12/31/2000 0:00	NAIC Risk-Based Capital for States West Life Insurance Company
0007911	0007967	12/31/2001 0:00	NAIC Risk-Based Capital for States West Life Insurance Company
0007968	0008007	12/31/1997 0:00	NAIC Risk-Based Capital for Likewise, A Premera Health Plan, Inc.
0008008	0008054	12/31/1998 0:00	NAIC Risk-Based Capital for Likewise, A Premera Health Plan, Inc.
0008055	0008107	12/31/1999 0:00	NAIC Risk-Based Capital for Likewise, A Premera Health Plan, Inc.
0008108	0008158	12/31/2000 0:00	NAIC Risk-Based Capital for Likewise, A Premera Health Plan, Inc.
0008159	0008187	12/31/2001 0:00	NAIC Risk-Based Capital for Likewise, A Premera Health Plan, Inc.
0008188	0008215	12/31/2000 0:00	NAIC Risk-Based Capital for Premera Healthcare
0008216	0008231	12/31/2001 0:00	NAIC Risk-Based Capital for Premera Healthcare
			Document Delivery Form providing response to request 51 - copy of D & T valuation of the PBC intangibles upon which a refund claim was based, summary of casualty loss deduction included in claims for refunds. There were no amortization deductions taken with respect to the D & T valuation. The deductions were casualty loss deductions.
0008646	0008731	11/1/2002 0:00	Document Delivery form providing response to request number 52 - copy of consent to follow IRS procedures with respect to accounting change, IRS permission to change accounting methods, response to additional questions with respect to the Form 3114, request for additional information with respect to Form 331, Form 3115
0008732	0008771	10/30/2002 0:00	
			Document Delivery Form for response to request number 57 - provides copies of 2001 PBC Washington, and PBC Alaska Premium Tax Return and 2001 SWL Washington Premium Tax Return, largest premium tax payment of an affiliate - documents considered Highly Sensitive Information
0008772	0008787	10/29/2002 0:00	Document Delivery Form for response to request number 59 providing copies of annual reports to policyholders
0008788		10/29/2002 0:00	
0008789	0008800	12/31/1997 0:00	Blue Cross Blue Shield of Alaska Annual Report
0008801	0008806	12/31/2000 0:00	Annual Report of Premera Blue Cross and Blue Cross of Alaska
0008807	0008812	12/31/2001 0:00	Annual Reports of Premera Blue Cross and Blue Cross of Alaska
0008813	0008821	12/31/1999 0:00	Annual Reports of Blue Cross Blue Shield of Alaska, Premera HealthPlus, and Premera Blue Cross
0008822	0008845	12/31/1998 0:00	Annual Reports of Blue Cross Blue Shield of Alaska, Premera Blue Cross, and Premera HealthPlus
			Document Delivery Form providing response to request number 61 - copies of Capital Benchmark Computation as of 12/31/98 for PBC, HealthPlus and Premera Shell, Capital benchmark Computation as of 12/31/97 for BCWA, MSC, of EWA, HealthPlus and Premera shell
0008846	0008874	10/30/2002 0:00	Document Delivery Form providing response to request number 66 - Detail analysis of interest income and expense for last five years
0008875	0009023	10/30/2002 0:00	Document Delivery Form in response to request number 69 providing Premera Blue Cross RBC percentage compared to BCBSA standard for years 1999 - 2001 and are public information
0009024	0009025	10/31/2002 0:00	

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PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0009026	0009027	10/30/2002 0:00	Document Delivery Form providing response to request number 71 with attached memorandum providing discussion of how members are counted and tracked
0009028	0009029	10/29/2002 0:00	Document Delivery Form for response to request number 72 providing copy of Accenture Impact Statement Report done for CareFirst transaction
0009071	0009072	1/1/2002 0:00	Accenture Community Impact Analysis of Proposed Conversion of CareFirst
0009072	0009073	10/30/2002 0:00	Document Delivery Form in response to request number 73 providing Notes to annual statements describing the impact of codification at 12/31/01
0009073	0009079	12/31/2001 0:00	Notes to Financial Statements for Premera Blue Cross, The Likewise, A Premera Health Plan, Inc., The States West Life Insurance Company, The Premera Likewise Health Plan, and MSC Life Insurance Company
0009080	0009092	10/30/2002 0:00	Document Delivery Form responding to request number 89 - list of top 25 provider contracts by dollar amount for 2001, list of top 25 vendor contracts by dollar amount for 2001, and number of vendor contracts as of 10/02 = 2700
0009093	0009094	10/31/2002 0:00	Document Delivery Form for documents responsive to request number 91. States that documents are proprietary information and includes agreements with physicians, providers, outpatient facility, hospital, facility and practitioner.
0009094	0009114	8/1/2002 0:00	PremeraFirst Facility Agreement
0009115	0009145	8/1/2002 0:00	PremeraFirst Practitioner Agreement
0009147	0009147	10/30/2002 0:00	Likewise Preferred Provider Agreement
0009158	0009166	10/4/2001 0:00	Likewise Outpatient Facility Agreement
0009167	0009181	9/1/2002 0:00	PremeraFirst Hospital Agreement
0009182	0009208	11/1/2002 0:00	Document Delivery Form for Alaska Form Facility Agreement and Alaska Form Practitioner Agreement claiming proprietary information
0009183	0009208	11/1/2002 0:00	Premera Blue Cross Blue Shield of Alaska Facility Agreement
0009209	0009232	11/1/2002 0:00	Premera Blue Cross Blue Shield of Alaska Practitioner Agreement
0009233	0009235	10/30/2002 0:00	Document Delivery Form responding to request J96 - providing investment portfolio analysis as of 12/31/01 and 12/31/02 to include maturity schedule and average life, quality analysis, yield analysis, market value analysis including unrealized gains/losses and mortgage backed securities and real estate characteristics.
0009236	0009237	10/29/2002 0:00	Document Delivery Form in response to request J97 providing detail on investment gains/losses for the years 1997 through 2001 and year to date through June 30, 2002
0009238	0009241	10/30/2002 0:00	Document Delivery Form providing response to request number J98 - providing list of asset managers, portfolio size and performance at 12/31/01, 6/30/02 and 9/30/02
0009242	0009243	10/29/2002 0:00	Document Delivery Form providing response to request number J99 - summary of derivative instruments
0009244	0009274	10/29/2002 0:00	Document Delivery Form providing response to request J100 - documentation of the investment policies and practices of Premera in effect as of 12/31/01 and 6/30/02
0009275	0009276	10/30/2002 0:00	Document Delivery Form providing response to request J101 providing summary of write-offs on investments. All investments are reviewed on a quarterly basis for impairment

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Appendix 1 - Premera Document Log

PREMERA DOCUMENT LOG

Doc#	Doc Title	Doc Date	Doc Description
0009277	0009733	10/31/2002 0:00	Document Delivery Form responding to request number 102 - providing Standard and Poors Briefing Books for 2001 and 2002, Standard and Poors Rating Memorandum, 2001 and 2001 AM Best Briefing Books, 1998 BC AM Best Rating, 2000 BC, SWL, LifeWest, Premera HC, and Premera AM Best Ratings.
0009307	0009314	9/30/2001 0:00	Interim Summary Operations
0009734	0009735	10/31/2002 0:00	Document Delivery Form in response to request 103 - providing summary of directors fees for Premera Blue Cross and Likewise Health Plan of Oregon
0009736	0009737	10/31/2002 0:00	Document Delivery Form providing response to request number 108 - FTE analysis by department and location, actual year-ending FTE 97 - 01, Actual October 02 FTE, Forecasted December 03 FTE
0009738		11/4/2002 0:00	Document Delivery Form for intercompany agreements responsive to request number 125, agreements not filed with state are claimed proprietary information, but not specifically identified Intercompany Agreement (allocation of costs) between Blue Cross of Washington and Alaska, Health plus, States West Life Insurance Co., Washington-Alaska Group Services, Inc., NCAS Northwest, Inc., Service-First Intermediary Co, Pacific Health and Life Insurance Co, and Western Benefits Administrators, Inc.
0009739	0009749	1/10/1994 0:00	Administrative Services Agreement between States West Life Insurance Co. and Pacific Health and Life Insurance Company
0009750	0009760	10/28/1995 0:00	Guaranty Agreement between Blue Cross of Washington and Alaska and States West Life Insurance Co.
0009761	0009762	3/3/1994 0:00	Restated Intercorporate Tax Sharing Agreement between Premera, Blue Cross of Washington and Alaska, and Medical Service Corp of Eastern Washington.
0009763	0009767	11/21/1994 0:00	Subsidiary Tax Sharing Agreement between Blue Cross of Washington and Alaska and Washington Alaska Group Services Inc. States West Life Insurance Co., Northwest Inc. Pacific Health & Life Insurance Co., Western Benefits Administrators and Service First Intermediary Company
0009768	0009774	10/10/1996 0:00	Services Agreement between Quality Solutions and Premera Blue Cross
0009790	0009799	9/1/2000 0:00	Administrative Services Agreement between NorthStar Administrators, Inc. and Premera Likewise Health Plan
0009800	0009800	5/1/2001 0:00	Administrative Services Agreement between NorthStar Administrators, Inc. and Premera Likewise Health Plan
0009809	0009816	2/26/2002 0:00	Services Agreement between Quality Solutions and Premera Blue Cross
0009817	0009826	7/15/2002 0:00	Funding and Billing Services Agreement between Life Wise Administrators, Premera Blue Cross, Premera Likewise Health Plan, MSC Life Insurance Co., Northstar Administrators, Inc., States West Life Insurance Co.,
0009827	0009832	7/1/2002 0:00	Intercompany Agreement (allocation of costs) between Blue Cross of Washington and Alaska, HealthPlus, States West Life Insurance Co., Washington Alaska Group Services, Inc., NCAS Northwest, Inc., Service First Intermediary Co., Pacific Health and Life Insurance Co, and Western Benefits Administrators, Inc.
0009833	0009843	1/10/1994 0:00	

PREMERA DOCUMENT LOG

Reg Bates	End Bates	Document Date	Title
0009844	0009854	10/28/1995 0:00	Administrative Services Agreement between States West Life Insurance Company and Pacific Health and Life Insurance Company
0009855	0009856	3/3/1994 0:00	Guaranty Agreement between Blue Cross of Washington and Alaska and States West Life Insurance Co
0009857	0009861	6/4/1997 0:00	Restated Intercompany Tax Sharing Agreement between Premera, Blue Cross of Washington and Alaska and Medical Service Corporation of Eastern Washington
0009862	0009868	10/10/1996 0:00	Subsidiary Tax Sharing Agreement between blue Cross of Washington and Alaska and Washington Alaska Group Services, Inc., States West Life Insurance Co, NCAS Northwest, Inc., Pacific Health & Life and Health Insurance Co,
0009884	0009893	9/1/2000 0:00	Services Agreement between Quality Solutions and Premera Blue Cross
0009894	0009902	5/1/2001 0:00	Administrative Services Agreement between NorthStar Administrators, Inc. and Premera Likewise Health Plan
0009903	0009920	2/26/2002 0:00	Administrative Services Agreement between NorthStar Administrators, Inc. and Premera Likewise Health Plan
0009921	0009926	7/1/2002 0:00	Funding and Billing Services Agreement between Likewise Administrators Inc., Premera Blue Cross, Premera Likewise Health Plan, MSC Life Insurance Company, NorthStar Administrators, Inc. States West Life Insurance Company
0009927			Document Delivery Form with response to request 127 providing copies of acquisition agreements which are proprietary information
0009928	0009929	10/29/1993 0:00	Amendment to Stock Purchase and Sale Agreement between Pacific Health & Life Insurance Company and Washington and Alaska Group Services
0009930	0009932	12/6/2000 0:00	Plan and Agreement of Merger between Premera HealthPlus and Premera Blue Cross
0009933	0009937	1/21/2000 0:00	Articles of Merger of MSC Service Corporation into Washington-Alaska Group Services, Inc.
0009938	0009941	6/16/1998 0:00	Plan and Agreement of Merger between Medical Service Corporation of Eastern Washington and Blue Cross of Washington and Alaska
0009942	0009953	11/14/1994 0:00	Alliance Agreement between Blue Cross of Washington and Alaska and Medical Service Corporation of Eastern Washington
0009954	0009961	11/2/1983 0:00	Agreement for sale of stock of States West Life Insurance Company
0009962	0010012	3/3/1986 0:00	Addendum to License Agreement among national Capital Administrative Services Inc., Insurdata, and Blue Cross of Washington and Alaska
0010013	0010016	1/6/1994 0:00	In the Matter of Proposed Plan to acquire 100 percent of issued and outstanding common stock of Pacific Health & life Ins. Co. by Washington and Alaska group Services Finding of Fact and Order in Case No. INS 93-12-015
0010017	0010032	8/23/1993 0:00	Stock Purchase and Sale Agreement between Pacific Health & Life Insurance Company and Washington and Alaska Group Services
0010033	0010034	10/29/2002 0:00	Document Delivery Form for response to request 128 providing Premera Conversion announcement kit

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0010035	0010148		Premiera Conversion Announcement Kit - Press materials for core Q and A, associates communications Q and A, Brokers and Employer Groups Q and A sample letters, Members Q and A, Physician/Providers and Facilities, Q and A and sample letters, Legislators, sample letter, mailing list order for announcement day mailing to select groups
0010149	0010161		Document Delivery Form responding to request M-129 - providing excerpts from focus groups, Seattle Consumers, Seattle Seniors, Seattle Business, Seattle Civic Activist, and Seattle Small Brokers
0010162	0010184	3/7/2002 0:00	Premiera Blue Cross Research Results
0010185	0010217	10/29/2002 0:00	Document Delivery Form responding to request number M129 - providing board presentation on announcement communications plan, pre conversion, 6/19/02 management meeting, G Barlow speech, Y Milo presentation
0010218	0010223	10/29/2002 0:00	Document Delivery Form responding to request M130 - providing communications plan, post-announcement/pre-conversion
0010218	0010223	10/29/2002 0:00	Document Delivery Form responding to request number M130 - providing communications plan, post announcement and pre-conversion
0010218	0010223	10/29/2002 0:00	Document Delivery Form providing response to request number M130 providing Communications plan, post-announcement/pre-conversion
0010224	0010252	11/5/2002 0:00	Document Deliver Form providing response to request number 10 - Providing schedule of payments/reimbursements for all inter-company expenses related to any intercompany agreements for year 2001 and for the six months ended 6/30/02 and nine months ended 9/30/02
0010254	0010260	6/26/2002 0:00	Premiera Meeting with Blue Cross Blue Shield Association Presentation
0010261	0010274	6/26/2002 0:00	Presentation to BCBSA "Premiera Reorganization"
0010275	0010283	11/6/2002 0:00	Document Delivery Form providing response to request WA 18 providing documents regarding IRC 501(c)(3) Private foundation, Panther Project, and document outlining relationship of Tax-Exempt organizations to for-profit entity.
0010284	0010292	11/6/2002 0:00	Document Delivery Form providing response to request 41 providing actuarial analysis and reports prepared for transaction.
0010977	0010981	11/6/2002 0:00	Document Delivery Form responding to request number 89 - providing number of customer contracts and list of top 25 customers
0010982	0011021	10/31/2002 0:00	Document Delivery Form responding to request number 102 - providing 2001 BC, SWL, Likewise, Premiera HC, AM Best Ratings
0011022		11/6/2002 0:00	Document delivery form responding to request number 7, - There are no studies/actuarial appraisals with respect to the financial implication of the transaction to Premiera. Minutes of board will elaborate on discussion that was held while Premiera consultants were present.
0011023		11/6/2002 0:00	Document Delivery Form there are no studies/actuarial appraisals with respect to the financial implication of the transaction to Premiera. Board meetings will elaborate on discussion that was held while Premiera's consultants were present. This is in response to request number 8.
0011023		11/6/2002 0:00	Document Delivery Form, responding to request number 8 - There are no studies or analyses prepared with respect to the impact of Premiera's conversion to for profit status.

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0011024		11/6/2002 0:00	Document Delivery Form for PBC Audited Consolidated Financial 1997 - 2000, 1997 Audited Consolidated Financials for MSC EW, 1997 Audited Financials for BCBWA, documents are public information
0011025	0011053	2/28/2001 0:00	Consolidated Financial Statements for Premera Blue Cross and Subsidiaries for Years Ended 12/31/00 and 1999
0011054	0011083	2/29/2000 0:00	Financial Statements - Statutory Basis for Premera Blue Cross for Years ended 12/31/99 and 1998
0011084	0011116	2/19/1999 0:00	Financial Statements - Statutory Basis for Premera Blue Cross Years ended 12/31/98 and 1997
0011117	0011140	4/15/1998 0:00	Consolidated Financial Statements for Medical Service Corporation of Eastern Washington and Subsidiaries for Years ended 12/31/97 and 1996
0011141	0011165	4/15/1998 0:00	Financial Statements - Statutory Basis for Blue Cross of Washington and Alaska for Years ended 12/31/97 and 1996
0011166		11/3/2002 0:00	Document Delivery Form for copies of Applicable notes and Schedule D pages form Premera Blue Cross annual statement for 2001. For request number 37
0011167		12/31/2001 0:00	Notes to Financial Statements for Premera Blue Cross
0011168		12/31/2001 0:00	Schedule D - Part 2 Section 2 from Premera Blue Cross Annual Statement for 2001
0011169		10/30/2002 0:00	Document Delivery Form for NAIC Risk Based Capital Calculations for Premera Blue Cross, MSC Life Insurance Company, HealthPlus, States West Life Insurance Company, Likewise, a Premera Healthplan, and Premera Likewise Health Plan. In response to request number 39.
0011170	0011210	12/31/1997 0:00	Life Risk-Based Capital Report
0011211	0011212	11/6/2002 0:00	Document Delivery form for WSHA Motion to Intervene, related correspondence, and related analysis. Response to request number 114
0011213	0011221	10/16/2002 0:00	Washington State Hospital Association Motion for Leave to Intervene
0011222	0011228	9/16/2002 0:00	Letter from Michael Madden to Yori Milo re: fact sheet which is attached and is titled Proposed By-Laws of Blue Cross of Washington and Alaska
0011229	0011231	9/27/2002 0:00	Letter from Kirk Dublin to Michael Madden re: possible litigation by WSHA and its claim that it has some interest in Premera or its assets.
0011232	0011359	10/4/2002 0:00	Letter from Kirk Dublin to Michael Madden re: delivering notebook of material that after review should agree that neither WSHA or any of its members have a claim against Premera Blue Cross
0011360	0011362	10/29/2002 0:00	Letter from Kirk Dublin to Michael Madden re: consider claim by WSHA to intervene an effort to delay the conversion process.
0011363	0011424	11/6/2002 0:00	Document delivery form responding to request number 23 - providing Stat to GAAP reconciliation's for Premera BC 97 - 01, States West Life 97 - 01, Likewise Health Plan of Oregon 97 - 01, MSC Life 97 - 01, MSC 97, HealthPlus 97 - 99, Likewise Health Plan of Washington 00 - 01.
0011425	0011459	11/3/2002 0:00	Document delivery form in response to request 34 and 34A - providing all letters from independent accountants to Premera or any subsidiary, and any reports prepared by internal auditors, counsel, or others, regarding Premera's internal systems, methods of accounting, and any correspondence related to material accounting issues since 1/1/98 and Internal control letter MSCL 99 - 01, SWL 99, and LWS 99.

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0011974	0012010	11/4/2002 0:00	Document Delivery Form responding to request number 90 - List of top competitors by product, including market share by geography (subset for Alaska and Washington, with further subdivisions for distinct geographic regions in Washington)
0012011	0012385	11/6/2002 0:00	Document Delivery Form providing response to request number 92 - Summary description of all reinsurance agreements in force from 97 - 01 and copies of all reinsurance agreements in force as of 12/31/01 and through the current date.
0012391	0012392		Request for Information response to request number 103 providing list of documents re: compensation levels, bonuses, director fees, independent consultant studies and board presentations
0012393	0012394		Premera Blue Cross Officer and Director Report re: Annual Compensation for year 2001
0012395	0012396	10/31/2002 0:00	Current Base Salaries of Premera Officers
0012397	0012404	11/1/2000 0:00	Board of Director Compensation Study
0012405	0012440	2/1/2002 0:00	Premera Executive Compensation Evaluation Presentation
0012441	0012442	2/5/2002 0:00	2001 Executive Compensation Evaluation
0012443	0012445	2/5/2002 0:00	Premera Blue Cross Change in Control and Severance Program
0012446	0012461	2/5/2002 0:00	Premera Blue Cross Compensation letters for years 2000 - 2002
0012462	0012474	2/12/2002 0:00	Premera Blue Cross Incentive Plans Presentation to Governance Committee
0012475	0012476	2/1/2002 0:00	2002 Officer Incentive Plan Participants
0012477	0012478	2/1/2002 0:00	2002 Long-Term Incentive Plan Participants
0012479	0012480	2/11/2002 0:00	Executive Management Group 2001 Annual Incentive Plan and Results
0012481	0012482	12/31/2001 0:00	EMG and Long-Term Participants payout 2001 year end
0012483			Request for information form in response to request number 105 - As of date of response board has made no decision re: management compensation for 2003, the annual incentive plan for 2003, the long term incentive plan for 2003 - 2005. Exhibit G-10 of Form A discusses stock program.
0012484		11/6/2002 0:00	Request for information sheet responding to request number 106 providing copies of Mercer presentations to Board
0012485	0012504	10/6/2002 0:00	Mercer Presentation to Board of Directors titled Life as a Public Company
0012505	0012531		Mercer presentation to Governance Committee to present minimum requirements for Form A Filing, provide comparative data of other conversions, industry standards, and establish timing for next steps and meetings
0012532	0012543	10/7/2002 0:00	Mercer presentation to Governance Committee re: Form A filing recommendation
0012544		11/6/2002 0:00	Request for Information form responding to request number 107 - providing summary of proposed stock grants, options or other equity-based incentive programs for directors - see Exhibit G-10 of Form A
0012545		11/6/2002 0:00	Request for Information responding to request number 110 providing copies of severance plans and change in control provisions
0012546	0012587	2/1/2001 0:00	Premera Blue Cross Change in Control Provisions
0012588	0012590	2/13/2002 0:00	Amendment to Premera Blue Cross Change in Control Provisions
0012591	0012630	3/13/2002 0:00	Premera Blue Cross Clarifying Amendment to Agreement Regarding Change in Control Benefits
0012631	0012652	10/7/2002 0:00	Premera Blue Cross Change in Control Provisions

PREMERA DOCUMENT LOG

Beg. Dates	End Dates	Document Date	Title
0012653		11/3/2002 0:00	Document Delivery Form responding to request number 124 - Stating that there have been no breaches or defaults under the terms of any agreements by Premera or any subsidiaries.
0013055	0013779	3/4/2002 0:00	Document Delivery Form providing response to request number 860 & 870 providing Additional materials related to the pricing of Premera's Dimensions plans. Included in the response to this request are the 2002 rate filings specific to the Dimensions plans. These documents were previously produced pursuant to WA65
0015553	0015558	11/12/2002 0:00	Document Delivery Form in response to request number 21a- Providing supplemental compensation exhibit for Premera Blue Cross 97, MSC Life 97, Premera HealthPlus 97, States West Life 97, Medical Service Corp. 97
0015960	0016037	11/13/2002 0:00	Document Delivery Form responding to request number 26 - providing breakdown of historical financial information on a premium and fee basis by product line, operating unit and geographic region. Providing income statements for all entities and lines of business for years 97 - 01, and 6/30/02, and 9/30/02
0016044	0016095	11/13/2002 0:00	Document Delivery Form response to request 74 - providing annual projections for 2002- 2006, including income statement, balance sheet, cash flow statement and key assumptions including Form A Combined financial projections and assumptions, projections by line of business
0016096	0016097	11/13/2002 0:00	Document Delivery Form responding to request number 76 - providing information regarding changes to current Premera operations.
0016098	0016099	11/13/2002 0:00	Document Delivery Form responding to request number 77 - providing schedule of interest expense and interest income for 2002 - 2006
0016100	0016101	11/13/2002 0:00	Document Delivery Form in response to request number 78 - providing schedule detailing capital expenditures for years 2002 - 2006
0016102	0016104	11/13/2002 0:00	Document Delivery Form responding to request number 79 - providing income statements for all entities and lines of business for years 97 - 01 and 6/30/02, detail schedule of premium receivable and unearned premiums for all entities and lines of business for years 97 - 01, and detail of reserve accounts provided for request 67
0016120	0016121	11/12/2002 0:00	Document Delivery Form in response to request number 103 - providing summary of director fees for Premera Blue Cross
0016122	0016125	11/6/2002 0:00	Document Delivery Form in response to request number 113 - Providing list of officer resignations for all Premera Affiliates since 1/1/97
0016126	0016128	11/12/2002 0:00	Document Delivery Form responding to request number 122 - providing Premera Blue Cross Insurance Summary; Certificate of Insurance regarding E&O and D& O Policies
0016574	000016576	11/6/2002 0:00	Document Delivery Form response to request number WA 5 - providing list of documents that have been presented to Premera by its financial advisors that have been used in analyzing the conversion and Premera's strategic alternatives.
0016584	0016585	11/15/2002 0:00	Document Delivery Form in response to request number 75 - Providing Projected RBC for 2002 - 2006
0016750	0016756	11/6/2002 0:00	Document Delivery Form responding to request number WA 04 providing copies of presentations to board of directors, and list of documents provided
0016757	0016765	1/23/2002 0:00	Charitable Trust Issue presented to Governance Committee

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0016766	0016786	1/24/2002 0:00	Premera Message and Financial Scenarios Materials Prepared for Board of Directors
0016787	0016788	1/24/2002 0:00	Information Review Schedule - 2001 prepared for Board of Directors
0016789	0016790	2/13/2002 0:00	Sales and Marketing Panel materials prepared for Board of Directors
0016807		2/13/2002 0:00	Capital Planning Overview agenda to include communications plan, legal follow-up and project costs
0016808	0016813	2/13/2002 0:00	Follow-Up Legal Issues presentation to Board of Directors
0016814	0016847	2/2/2002 0:00	2002 Strategic Platform
0016848	0016851	5/14/2002 0:00	Date Tabs with Overview of Agenda for May Board Meeting
0016852	0016861	5/14/2002 0:00	Business Case Review Materials Prepared for the Board of Directors
0016862	0016913	5/14/2002 0:00	Draft Business Case Study
0016914	0016923	9/9/2001 0:00	Capital Planning Options for Board Retreat
0016924	0016940	5/14/2002 0:00	Duties and Review of Director Conduct prepared for Board of Directors Meeting
0016941	0016952	5/14/2002 0:00	Communications Plan prepared for Board of Directors
0016953	0016956	5/14/2002 0:00	Post-Decision Timeline and Management Conclusions materials prepared for Board of Directors
0016957			Proposed Resolutions Regarding the Conversion to For Profit Status
0016958	0017007	5/21/2002 0:00	Materials Prepared for General Managers
0017008	0017047	5/28/2002 0:00	Materials prepared for Officer Meeting
0017048	0017059	6/2/2002 0:00	Conversion to a Publicly Held Company prepared for P & O Meeting
0017060	0017101	7/25/2002 0:00	Board Orientation Legal and Public Policy
			Presentation to Former Board Members to include the Premera Story, B&ST and Dimensions
0017102	0017119	8/13/2002 0:00	Transformation, and Reorganization to Access Equity Markets
0017120	0017130	9/25/2002 0:00	Being a Public Company Performance & Outlook Meeting
0017131	0017134	10/6/2002 0:00	Agenda for Board Retreat "Life as a Public Company"
0017135	0017170	10/6/2002 0:00	Regarding Value Drivers
0017171	0017186	10/6/2002 0:00	Regarding the IPO Process presentation to Premera
0017187	0017220	8/16/2002 0:00	Sarbanes-Oxley Act of 2002
0017221	0017226		Biographies of Morgan Stanley, Goldman Sachs, Mercer and Sullivan & Cromwell
			Morgan Stanley Presentation re: The managed care sector, what differentiates the comparables, and being a public company
0017227	0017259	10/1/2002 0:00	
0017261	0017289	10/6/2002 0:00	Presentation to Premera Regarding Value Drivers
0017290	0017303	10/6/2002 0:00	Presentation to Premera re: The IPO Process
0017304	0017339	10/6/2002 0:00	Mock Presentation To Investors
0017340	0017345	10/6/2002 0:00	Managing Market Expectations materials prepared for Board of Directors
0017346	0017360	10/6/2002 0:00	Premera Business Plan materials prepared for Board of Directors
			Board of Governance materials prepared for Board of Directors re: post-Enron response, major compliance topics, considerations for Premera - Next Steps
0017361	0017390	10/8/2002 0:00	
0017394	0017405	1/31/2001 0:00	Medical Management Strategy Update
0017406	0017425	2/8/2001 0:00	Premera Orientation
0017427	0017480	3/28/2001 0:00	2000 Essential 8 Report
0017481	0017491	5/9/2001 0:00	Premera Risk Based Capital presentation to Board of Directors

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Beg Bates	End Bates	Document Date	Title
0017492	0017522	5/24/2001 0:00	Project Washington Discussion Materials
0017523	0017526	6/27/2001 0:00	Strategic 7 Update
0017527	0017568	6/28/2001 0:00	Legal & Government Affairs New Board Member Orientation
0017569	0017615	7/24/2001 0:00	Overview of Corporate Strategy prepared for Vice President Leadership Form Presentation to Directors re: introduction to Goldman Sachs, Managed Care Update, Summary of Blues
0017616	0017645	8/8/2001 0:00	Activity, Current Premera Situation, Capital Raising Alternatives, and Next Steps
0017646	0017681	9/9/2001 0:00	The Market Environment Prepared for Board of Directors
0017682	0017698	9/9/2001 0:00	Overview of Corporate Strategy presentation to 2001 Annual Board of Directors Retreat
0017699	0017745	9/9/2001 0:00	"The Company" presentation to Board of Directors
0017746	0017775	9/9/2001 0:00	Premera Discussion Materials
0017776	0017785	9/9/2001 0:00	Conversion: What to Expect? Overview of Structure and Approach presentation to Board
0017786	0017815	12/1/2001 0:00	Strategic 7 Overview presentation to P & O Meeting
0017823	0017863	5/10/2000 0:00	Premera Board Member Orientation
0017864	0017870	5/17/2000 0:00	Business Systems Strategy
0017874	0017878	8/16/2000 0:00	CEO Report Gubb Special Topics
0017879	0017882	8/16/2000 0:00	Medical Management Strategy and Vision
0017883	0017903	8/16/2000 0:00	Business & Systems Transformation Board presentation
0017906	0017909	10/24/2000 0:00	Essential 8 Update/2001 Focus Areas
0017916	0017931	2/24/1999 0:00	Strategic Plan 2001 Objectives Discussion of certain financial issues related to the proposed merger of BC Washington and Alaska and
0017945	0017961	1/18/1998 0:00	the Medical Services Corp of Eastern Washington
0017962	0017964	10/1/1997 0:00	Premera Market Share Chart
0017965	0017982	1/29/1998 0:00	Premera Year 2000 Renovation Strategies presentation to Board
0017983		1/29/1998 0:00	List of Premera 1998 Initiatives
0017991	0018001	8/12/1998 0:00	Building Our Market Focus presentation to Board
0018005	0018037	11/11/1998 0:00	Premera Strategy for 2000 and Beyond
0018039	0018048	2/12/1997 0:00	Premera 1997 Plan Milestones Profitability
0018049	0018058	2/13/1997 0:00	Premera Capital Plan Progress Report
0018063	0018068	6/19/1997 0:00	Premera Overview of Strategic Planning Framework
0018069	0018100		Premera Health Care Cost Trends and Actuarial Audit
0018101	0018128		Market Segment Strategy
0018129	0018147		Product Strategy
0018148	0018165		Network/Care Management Strategy
0018166	0018187	6/19/1997 0:00	Premera Compensation & Benefits presentation to Board
0018191	0018231	9/10/1997 0:00	Project Cascades presentation to Board
0018234	0018255	11/11/1997 0:00	Premera Year 2000 Renovation Strategies presentation to Board
0018256	0018277	11/12/1997 0:00	Project Cascades Capital Alternatives presentation to Board

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0018279	0018308		Document Delivery Form providing response to request number 40 - copy of report of financial examination by Oregon Insurance Division as of 12/31/99 re: Likewise of Oregon, and memorandum dated 12/13/02 to Neeraj Gupta from Mike Phillips re: follow-up examination of Likewise of Oregon
0018309	0018310	11/5/2002 0:00	Document Delivery Form providing response to request number 54 - analysis of the provision for tax contingencies for the calendar years 99 - 01
0018311	0018313	11/20/2002 0:00	Document Deliver Form providing response to request number 64 - providing lapse experience by LOB for 99 - 01
0018314			Request for Information Form providing response to request number 109 - copies of employment agreements with Premera executives
0018316	001322	3/17/1997 0:00	Employment agreement between Premera and H. R. Brereton Barlow
0018324	0018325	3/12/1998 0:00	Amendment 1 to Employment Agreement between Premera and H.R. Brereton Barlow
0018327	0018329	3/12/1998 0:00	Amendment 2 to Employment Agreement between Premera and H.R. Brereton Barlow
0018331	0018336	5/17/2000 0:00	Amendment 3 to Employment Agreement between Premera and H.R. Brereton Barlow
0018338	0018340	2/13/2002 0:00	Amendment 4 to Employment Agreement between Premera and H.R. Brereton Barlow
0018342	0018343	11/8/2002 0:00	Amendment 5 to Employment Agreement between Premera and H.R. Brereton Barlow
0018345	0018355	4/8/1996 0:00	Employment Agreement between Premera and Yoram Milo
0018357	0018359	3/12/1998 0:00	Amendment 1 to employment agreement between Premera and Yoram Milo
0018361	0018362	11/8/2002 0:00	Amendment 2 to Employment Agreement between Premera and Yori Milo
0018364	0018370	5/5/1997 0:00	Employment Agreement between Premera and Andrew B. Wang
0018372	0018373	11/12/1998 0:00	Amendment 1 to Employment Agreement between Premera and Andrew B. Wang
0018375	0018377	5/11/2001 0:00	Amendment number 2 to Employment Agreement between Premera and Andrew B. Wang
0018378			Request for Information responding to request number 111 - providing changes to severance plans
0018379	0018380		Supplemental Information Request B WA 108 B167 - providing number of employees in Alaska for the last 3 years by function/office and estimated number of employees in Alaska after proposed conversion by function/office
0018381		11/14/2002 0:00	Document Delivery Form providing response to request number B101 - strategic plan or plans presented to Board have all ready been provided in request WA 04
0018382		11/14/2002 0:00	Document Delivery Form providing response to request number B104 - there are no business plans that address the planning and implementation of the conversion in Alaska
0018383		11/14/2002 0:00	Document Delivery Form providing response to request number B105 - there are no marketing plans that address the implementation of the conversion in Alaska.
0018384		11/14/2002 0:00	Document Delivery Form providing response to request number B107 0- there have been no meetings held to discuss post-conversion plans as Premera's business approach in Alaska is not expected to change as a result of the conversion.
0018385		11/14/2002 0:00	Document Delivery Form responding to request number B142 - no information has been sent to potential investors, B143 response contains brief introduction that was presented to investment banks.

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0018386	0018395	11/19/2002 0:00	Supplemental Information Request B 145a - providing listing of 20 largest group customers showing coverage components.
0018396	0018553	6/1/2000 0:00	Supplemental Information Request B 155 - providing sample of computer generated reports that are provided to large group customers.
0018554			Supplemental Information Request C B 220 - for net per risk and aggregate retentions, and any major changes over the last three years see WA 82 - Rate Manual
0018555	0018567	11/20/2002 0:00	Document Delivery Form responding to request number B153 - providing examples of reports which summarize costs by provider by allowed charges
0018568	0018618	11/20/2002 0:00	Document Delivery Form providing response to request B165 - providing copies of notices about changes in fee schedules over the last 3 years
0018619	0018620	11/21/2002 0:00	Document Delivery Form responding to request number 208 - Premera major outsourced operations includes pharmacy benefits manager Merck Medco. No administration fee is paid to Medco for their services. There are no other major outsourced operations.
0018621	0018622	11/19/2002 0:00	Document Delivery Form providing response to request C212 - providing Premera medical business market size estimates for Washington, Alaska and Oregon
0018623	0018626	11/19/2002 0:00	Document Delivery Form responding to C214 - providing top 10 agents for each of the last three years by product group
0018627	0018634	11/20/2002 0:00	Document Delivery Form providing response to request number C215 - providing list of top 10 accounts each of last 3 years by product group
0018635	0018636	11/21/2002 0:00	Document Delivery Form responding to request number 217 - information is not readily available from the BlueCard (ITS) system, the national BCBS claims system.
0018637	0018638	11/21/2002 0:00	Document Delivery Form providing response to request number 218 - Alaska BCBS does not have any national accounts for which it contracts with other plans to provide services
0018639		11/20/2002 0:00	Document Delivery Form responding to request number C225 - Number of provider hospitals - 122, Clinics - 12,043, and providers - 20,566
0018640	0018642	11/21/2002 0:00	Document Delivery Form providing response to request number C226 - providing list of top 10 hospital service providers for 2000 and 2001
0018643	0018645	11/21/2002 0:00	Document Delivery Form providing response to request C227 - providing list of 25 doctor providers for 2000 and 2001
0018646	0018647	11/20/2002 0:00	Document Delivery Form providing response to request number C232 - summarizing recent changes in reserving practices.
0018648	0018649	11/21/2002 0:00	Document Delivery Form providing response to request number 247 - Premera has no sources of additional liquidity other than the capability to execute reverse repurchase agreements. There are no covenants associated with these reverse repurchase agreements.
0018650	0018651	11/21/2002 0:00	Document Delivery Form providing response to request number 248 - consolidation worksheets were provided as part of request number B24 and B25.
0018652	0018893	11/14/2002 0:00	Document Delivery Form providing response to request number D302 - providing detail on the number and type of provider contracts in each network by county or relevant geographic area.
0018894	0018896	11/21/2002 0:00	Document Delivery Form providing response to request number 303- providing list of top 25 provider contracts ranked by payments by type of provider for 2000 and 2001

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Appendix 1 - Premera Document Log

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0018897	0018900	11/20/2002 0:00	Document Delivery Form providing response to request number D304 - providing list of top 3 individual and small and large group market benefit designs, no percent of market information available.
0018901	0018902	11/20/2002 0:00	Document Delivery Form providing response to request number D305 and D306 - providing description definition of geographic rating areas used for small group market, no geographic rating for individual market, and summary of recent changes in the area factors for small group market.
0018903	0018909	12/10/2002 0:00	Document Delivery Form responding to request WA06 - providing copy of 1/24/02 Special Meeting of Board of Directors
0018904		1/24/2002 0:00	Premiera Blue Cross Special Meeting of Board of Directors
0018910		11/6/2002 0:00	Document Delivery Form responding to request number WA 13 providing copies of all correspondence between Premiera and BCBSA
0018911	0018914	12/9/2002 0:00	Document Delivery Form providing response to request number 34B - providing copies of internal control letters from Ernst and Young for years 1998 for PBC, LWS and MSC Life
0018915		11/18/2002 0:00	Document Delivery Form providing response to request number B143 - providing copies of materials sent to potential investment banks and other potential investors regarding Premiera's post conversion finances
0018916	0018929	8/9/2002 0:00	The Dimensions Experience presentation to Goldman Sachs
0018930	0018943	8/9/2002 0:00	Business & Systems Transformation presentation to Goldman Sachs
0018944	0018978	8/9/2002 0:00	Presentation for Goldman Sachs Due Diligence "Corporate Strategy"
0018979	0019009	8/8/2002 0:00	Five Year Planning Model for Goldman Sachs onsite Visit
0019010	0019021	8/8/2002 0:00	Goldman Sachs due diligence - Premiera Operating Income Targets
0019022	0019023	12/3/2002 0:00	Document Delivery Form responding to request number B164 - providing HCE analysis of physician fee schedule unit cost increases from 2000 - 2002
0019024	0019025	12/3/2002 0:00	Document Delivery Form providing response to request number B166 - providing HCE prepared inpatient and outpatient experience analysis showing aggregate changes from 98 to 02
0019026	0019027	12/6/2002 0:00	Document Delivery Form providing response to request number 256 providing the 2000 and 2001 capital budget
0019028	0019029	12/6/2002 0:00	Document Delivery Form providing response to request number 800 providing statutory operating results broken out between WA & AK business for 97 - 01
0019030	0019032	12/6/2002 0:00	Document Delivery Form providing response to request number 801 - statutory operating results for WA business for 97 - 01 were provided as part of request Z800, GAAP operating results for AK business is part of request #F60
0019033	0019049	11/21/2002 0:00	Document Delivery Form providing response to request number 802 - Statutory Management discussion and analysis for years 97 - 01; GAAP MD&A were provided as part of request number B28
0019050		11/21/2002 0:00	Document Delivery Form providing response to request number 803 - projections and assumptions for Alaska business were provided as part of the Alaska Form A filing and request G74

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0019051	0019053	12/6/2002 0:00	Document Delivery Form providing response to request number 804 - Premera consolidated 9/30/01 balance sheet and cash flow statement, the consolidated 9/30/01 income statement was provided as part of request B25
0019054	0019343	12/2/2002 0:00	Document Delivery Form providing response to request number 805 - providing Premera G&A allocation summary, 2002 Premera cost center rollup structure, 2002 cost center details report, 2002 September YTD administrative costs by line of business by cost center
0019344		12/6/2002 0:00	Document Delivery Form providing response to request number 806 - providing copies of audited statutory financial statements
0019345	0019357	4/4/1991 0:00	Pacific Health and Life Insurance Company Statutory Financial Statements for 12/31/90
0019345	0019357	4/10/1992 0:00	Pacific Health and Life Insurance Company Statutory Financial Statements for 12/31/91 and 90
0019374	0019391	4/2/1993 0:00	Pacific Health and Life Insurance Company Statutory Financial Statements for 12/31/92 and 91
0019392	0019409	4/13/1994 0:00	Pacific Health and Life Insurance Company Statutory Financial Statements for 12/31/93 and 92
0019410	0019435	2/3/1995 0:00	Pacific Health and Life Insurance Company Statutory Financial Statements for 12/31/94 and 93
0019436	0019453	2/21/1996 0:00	Pacific Health and Life Insurance Company Statutory Financial Statements for years 12/31/95 and 94
0019454	0019478	2/24/1997 0:00	Pacific Health and Life Insurance Company Statutory Financial Statements for years 12/31/96 and 95
0019479	0019490	1/31/1992 0:00	States West Life Insurance Company Statutory Financial Statements for year 12/31/91
0019491	0019502	1/31/1994 0:00	States West Life Insurance Company Statutory Financial Statements for year 12/31/93 and 92
0019503	0019522	3/15/1995 0:00	States West Life Insurance Company Statutory Financial Statements for year 12/31/94 and 93
0019523	0019551	2/16/1996 0:00	States West Life Insurance Company Statutory Financial Statements for year 12/31/95 and 94
0019552	0019580	2/7/1997 0:00	States West Life Insurance Company Statutory Financial Statements for year 12/31/96 and 95
0019581	0019590	1/31/1994 0:00	HealthPlus Statutory Financial Statements for 12/31/93
0019591	0019604	4/6/1995 0:00	HealthPlus Statutory Financial Statements for 12/31/94 and 93
0019605	0019620	2/16/1996 0:00	HealthPlus Statutory Financial Statements for 12/31/95 and 94
0019621	0019636	2/7/1997 0:00	HealthPlus Statutory Financial Statements for 12/31/96 and 95
0019637	0019657	1/31/1997 0:00	MSC Life Insurance Company Financial Statements for 12/31/96 and 95
0019658	0019681	1/26/1996 0:00	Medical Service Corporation of Eastern Washington Financial Statements for 12/31/95 and 94
0019682	0019706	1/31/1997 0:00	Medical Service Corporation of Eastern Washington Financial Statements for 12/31/96 and 95
0019707	0019720	1/31/1994 0:00	Blue Cross of Washington and Alaska Statutory Financial Statements for 12/31/93
0019721	0019739	3/31/1995 0:00	Blue Cross of Washington and Alaska Statutory Financial Statements for 12/31/94 and 93
0019740	0019765	2/16/1996 0:00	Blue Cross of Washington and Alaska Statutory Financial Statements for 12/31/95 and 94
0019766	0019789	2/7/1997 0:00	Blue Cross of Washington and Alaska Statutory Financial Statements for 12/31/96 and 95
0019790		12/10/2002 0:00	Document Delivery Form responding to request number E807 - providing copies of internal audit results
0019791		1/8/2001 0:00	Second Follow-up Audit of Premera PEBB HealthPlus Claims
0019791		1/10/2001 0:00	Second Follow-up Audit of Premera Blue Cross Association Premiums
0019793		2/9/2001 0:00	Second Follow-up Audit of the Firewall
0019794		4/11/2001 0:00	Third Follow-up Audit of Premera Blue Cross Association Premiums
0019795		4/26/2001 0:00	Follow-up Audit of BlueCHIP Revenue Processing & Accounting/Collections

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PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0019796		4/30/2001 0:00	Follow-up Audit of Premera Blue Cross Investment Policies and Procedures
0019797	0019803	6/4/2001 0:00	Follow-up Audit of Data Warehouse
0019804	0019810	6/29/2001 0:00	Follow-up Audit of BlueCHIP Claims Processing & Accounting
0019811	0019815	7/24/2001 0:00	Follow-up Audit of States West Life Claims System Application
0019816	0019823	8/8/2001 0:00	Second Follow-up Audit Premera Blue Cross Fixed Asset Inventories
0019824	0019829	8/9/2001 0:00	Computer Center Security Audit
0019830	0019831	11/9/2001 0:00	Audit of Federal Employees Program - Claims and Accounting
0019832		11/15/2001 0:00	Fourth Follow-up Audit of Premera Blue Cross Association Premiums
0019833	0019835	11/29/2001 0:00	Follow-up Audit of Quality Solutions (Formerly Investigations & Recovery) Limited Review of Premera Blue Cross Federal Employees Program New Claims Processing System
0019836		12/20/2001 0:00	Acceptance Testing
0019837	0019840	1/8/2002 0:00	Audit of Eastern Washington BlueCHIP Membership and Billing
0019841	0019849	1/10/1992 0:00	Audit of AMISYS Managed Care Claims Limited Review of Premera Blue Cross Federal Employees Program New Claims Processing System
0019850		3/8/2002 0:00	Acceptance Testing - Phase II
0019851	0019857	3/20/2002 0:00	Audit of Eastern Washington BlueCHIP Claims Processing
0019858	0019860	4/2/2002 0:00	Audit of Premera Blue Cross Medicare Supplement Membership & Billing/Accounting
0019861		4/25/2002 0:00	Third Follow-up Audit of Premera Blue Cross Fixed Asset Inventories
0019862		5/2/2002 0:00	Fifth Follow-up Audit of Premera Blue Cross Purchasing Functions
0019863	0019870	5/9/2002 0:00	Audit of HealthPlus 8.1 Provider Master File Operations Limited Review of Premera Blue Cross Federal Employees Program Basic Option Claims Processing and
0019871	0019872	5/10/2002 0:00	Accounting
0019873	0019879	5/17/2002 0:00	Follow-up Audit of Computer Center Security Document Delivery Form responding to request B157 - providing payment methodologies for each product, and fee schedules by product and provider type if appropriate
0019880	0019881	11/15/2002 0:00	Document Delivery Form responding to request number B136 - listing of physicians for each product available for review in electronic access database format by request. Likewise HealthPlan of Oregon, FEP WA, FEP AK and PEBB were excluded from questionnaire.
0019882	0019883	12/16/2002 0:00	Document Delivery Form responding to request number B163 - providing surveys (independent or internally prepared) on consumer or provider perception of plans
0019884		12/13/2002 0:00	Consumer assessment of Health Plans (CAHPS) survey results - Summary of 2000 PPO CAHPS - Alaska November 2000 and Questionnaire
0019885	0019934		Premera Physician Satisfaction Study - August 2002 (Revised 10/4/02) and Questionnaire
0019935	0019987		Premera Member Satisfaction - 2002 Monitor - Summary Presentation to EMG - October 10, 2002 and Questionnaire
0019988	0020015		Document Delivery form providing response to request number E416 - providing copy of AI Smith HIPAA project update provided to Board of Directors
0020016	0020028	5/15/2002 0:00	Document Delivery form responding to request number E421 - Glover's presentation on fiduciary duties
0020029		12/16/2002 0:00	applicable3 to the board has already been provided at 0016924 - 0016940

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Beg Bates	End Bates	Document Date	Title
0020030	0020052	12/12/2002 0:00	Document Delivery Form responding to request number E428 - providing 2001 and 2002 MTM results as reported to BCBSA
0020053	0020059		Document Delivery Form responding to request number E429 - providing 2002 FEP PIP Results as reported to FEPDO
0020060	0020176		Document Delivery Form responding to request number E435 - providing Memorandum of Understanding between BCWA and MSC dated 1/15/94, and Alliance Agreement and Exhibits to BCWA-MSC Alliance Agreement and Plan and Agreement of Merger dated 1/14/94
0020177	0020178	12/12/2002 0:00	Document Delivery Form response to request number E436 - Current standard Premera provider fee schedule effective September 1m, 2002 through August 31, 2003
0020179	0020181	12/12/2002 0:00	Document Delivery Form response to request number 808 - 2002 internal audit report index (since June 2002) and PBC internal audits currently open
0020182	0020444	10/22/2002 0:00	Document Delivery Form providing response to request WA 04 providing presentations from senior management or by Premera's financial advisors) to Premera's management, its Board or any of its subcommittees regarding corporate strategy and planning.
0020445	0020534	12/18/2002 0:00	Document Delivery Form providing response to request WA 126 providing environmental reports for buildings 2 and 4 at Premera's Mountlake Terrace Campus
0020535	0020536	12/20/2002 0:00	Document Delivery Form providing response to request 141 - providing forecasted conversion costs for 2002 and 2003
0020537	0020538	12/19/2002 0:00	Document Delivery Form providing response to request E404 providing electronic version of Schedule D as of 12/31/00 and 12/31/01
0020539	0020543	12/6/2002 0:00	Document Delivery Form providing response to request E406 providing accounts receivable aging schedule - 9/30/02 & 12/31/01
0020544	0020545	12/19/2002 0:00	Document Delivery Form providing response to request E409 providing schedule of sale lease back transactions.
0020546	0020547	12/6/2002 0:00	Document Delivery Form providing response to request E413 providing definition of BCBSA RBC Levels.
0020548	0020549	12/12/2002 0:00	Document Delivery Form providing response to request 807 providing an explanation of FEP unearned premium reserve account
0020550	0020559	12/12/2002 0:00	Document Delivery Form providing response to request 808 - providing 9/30/02 GAAP MD&A, 9/30/02 Balance Sheet, Income Statement, Changes in Equity and Cash Flow
0020560	0020561	12/12/2002 0:00	Document Delivery Form providing response to request 809 - providing description of 12/31/01 loss on fixed assets
0020562	0020563	12/19/2002 0:00	Document Delivery Form providing response to request Z810 providing listing of non-recurring items in 2001 and through 9/30/02
0020564	0020565	12/19/2002 0:00	Document Delivery Form providing response to request Z811 providing description of how investment income was allocated to line of business on 2000 annual statement
0020566	0020588	12/12/2002 0:00	Document Delivery Form providing response to request 812 providing sample plan agreements for one physician for the Physician Deferred Compensation Plan 12/15/87, 12/31/82, 8/1/79, 1/4/78, 3/20/73, 5/1/68

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Beg. Bates	End Bates	Document Date	Document Title
0020589	0020614	12/20/2002 0:00	Document Delivery Form providing response to request 814 providing experience rated refund detail reports for PBC & MSC as of 12/31/01 & 9/30/02
0020615	0020616	12/29/2002 0:00	Document Delivery Form providing response to request Z815 - providing list of assets for which the liability account 27010 relates to.
0020617		12/19/2002 0:00	Document Delivery Form providing response to request Z816 for combined statement of changes in net worth for 12/31/01 and 9/30/02 see request #Z808
0020618	0020677	12/19/2002 0:00	Document Delivery Form providing response to request Z819 providing GAAP to Stat worksheets as of 9/30/02 for PBC, Likewise OR, Likewise WA, SWL, MSC Life
0020678	0021408	12/19/2002 0:00	Document Delivery Form providing response to request Z820 - providing historical Annual reports for years 1948- 1952; 1954 - 1985; 1987; 1989 - 1992
0021409	0021459	12/23/2002 0:00	Document Delivery Form providing response to request 825 providing 2002 First Quarter BDR Reports
0021460	0021462	12/31/2002 0:00	Document Delivery Form providing response to request WA 110 providing amendment to Premera BC Change in Control Provisions version 10/7/02 and adopted by Premera Governance Committee on 12/10/02
0021463	0021466	12/27/2002 0:00	Document Delivery Form providing response to request 116 - 119 providing narrative response to Consultant
0021467	0021524	12/31/2002 0:00	Document Delivery Form providing response to request B141 providing examples of reports which summarize the results of cost containment activities and care facilitation state of the department report - November 2002 prepared by clinical systems support
0021525	0021662	12/23/2002 0:00	Document Delivery Form providing response to request E433 providing all documents in Premera's possession that were prepared in connection with HSR reports concerning the alliance of BCWashington and Alaska and Medical Service Corp in Eastern Washing in 1994 and merger of those corp in 1998
0021663	0021672	12/23/2002 0:00	Document Delivery Form providing response to request E437 providing top 25 procedure summaries by county by 1 allowed amounts, 2 utilization, and 3 allowed dollars through 11/01/02
0021673	0021681	12/30/2002 0:00	Document Delivery Form providing response to request 822 providing screen prints of BlueChip security login and menu screens, screen prints from procedure write with sample suspense codes, screen print of the suspense review trial, sample claims activity register with test data
0021682	0021745	12/20/2002 0:00	Document Delivery Form providing response to request 823 providing computer and network usage policy, email usage policy, confidentiality statement, new Enterprise wide security standards/guidelines, IT Org chart
0021746	0021777	12/20/2003 0:00	Document Delivery Form providing response to request 824 providing which Unix security logs are generated and reviewed, providing sample of the Unix security logs and RACF Setropts reports
0021778	0021811	12/20/2003 0:00	Document Delivery Form providing response to request 831 providing IT security log in screen print, telecommute user agreement, IT security profiles for Claims I and Claims II processors, CIS Security screen prints, termination and leave of absence database screens, network account policy and audit policy settings, telecommute workplace agreement, IT terminating procedures, IT security authorization request form.

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Beg Bates	End Bates	Document Date	Title
0021812	0021839	1/3/2003 0:00	Document Delivery Form providing response to request WA 25 providing Consolidated GAAP Financial Statements for Premera Blue Cross for 2001
0021840	0022039	1/3/2003 0:00	Document Delivery Form providing response to request WA28 - providing copy of Monthly Internal Management Reports for September - November 2002
0022040	0022044	11/18/2002 0:00	Document Delivery Form providing response to request 49 providing copy of draft Form of Opinion for Section 833, draft Form of Opinion for Sections 368 and 382, and ruling requests to the Washington Department of Revenues with respect to certain excise taxes are in the process of initial drafting
0022045		1/3/2003 0:00	Document Delivery Form providing response to request - 2001 Washington Form B filing to be provided electronically
0022046	0022138	1/2/2003 0:00	Document Delivery Form providing response to request E408 - providing copy of Fixed asset listings of additions and dispositions as of 12/31/01 and year to date 11/02
0022139	0022141	1/2/2003 0:00	Document Delivery Form providing response to request E410 providing Premiums earned, claims incurred and enrollment information by State for year to date 9/30/02
0022142	0022142	1/2/2003 0:00	Document Delivery Form providing response to request E412 - providing Description of the S&P rating technique written by Joseph Marinucci, Premera's S&P analyst
0022144	0022145	1/2/2003 0:00	Document Delivery Form providing response to request - providing Electronic version of the source data for written premiums for the nine months ended 9/30/02 1) WA \$1,389,172,984 and AK \$ 218,500,188
0022146	0022147	1/2/2003 0:00	Document Delivery Form providing response to request Z813 - providing summary of total costs, total capitalized costs, internal costs capitalized and total expensed costs relating to B&ST for 9 months ended 9/30/02 and for 11 months ended 11/30/02
0022148	0022149	1/3/2003 0:00	Document Delivery Form providing response to request Z817 providing headcount for accrued vacation, SRP, accrued retirement and accrued incentive as of 12/31/01 and 9/30/02
0022150	0022151	1/4/2003 0:00	Document Delivery Form providing response to request Z818 - annualized program costs are up \$5 million, and annualized infrastructure costs are up \$4.3 million.
0022152	0022153	1/2/2003 0:00	Document Delivery Form providing response to request Z833 - providing FEP enrollment December 1997 - 2001 and 9/30/02 for WA and AK
0022154	0022155	1/4/2003 0:00	Document Delivery Form providing response to request Z836 providing electronic version of Schedule D as of 9/30/02 for PBC
0022156	0022157	1/4/2003 0:00	Document Delivery Form providing response to request Z837 providing electronic version of Schedule D as of 12/31/01, and 9 30/02 for SWL, MSC Life, Likewise of OR and Likewise of WA
0022158	0022195	1/6/2003 0:00	Document Delivery Form response to WA 04 providing copies of Board presentation, dated 8/14/02 "Conversion Update" and Board presentation dated 12/12/01 "Capital Planning."
0022196		1/6/2003 0:00	Document Delivery Form for response WA 130 Providing list of future communications regarding Premera's conversion proposal with policyholders, agents, physicians, employees, other groups and interested persons.
0022197	0022211	1/6/2003 0:00	Document Delivery Form response to request B106 - provides copies of agendas of all Premera meetings at which the planned conversion was discussed

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Beg Bates	End Bates	Document Date	Title
0022212	0022213	1/9/2003 0:00	Document Delivery Form response to request C216 - providing a description of changes in commissions
0022214	0022217	1/10/2003 0:00	Document Delivery Form providing response to request E414 providing Premera Polices Governing the Powers and Fiduciary Duties of Directors
0022218	0022221	1/10/2003 0:00	Document Delivery Form providing response to request E415 - providing memo re: Premera and Premera BC annual conflict of interest review dated 5/1/02
0022222	0022240	1/6/2003 0:00	Document Delivery Form providing response to request E420 providing copy of Board presentation dated 5/14/02 "Transaction Structure"
0022241	0022242	1/2/2003 0:00	Document Delivery Form providing response to request E440 - providing copy of analysis of the deferred tax valuation allowance for years 1999 - 2001
0022243	0022245	1/2/2003 0:00	Document Delivery Form providing response to request E442 - providing copy of matrix of types of state taxes
0022246	0022258	1/10/2003 0:00	Document Delivery Form providing response to request 821 - providing copy of Premera Change of Control Polices and Procedures
0022259	0022263	1/10/2003 0:00	Document Delivery Form providing response to request 839 - providing description of major network outages in 2002
0022259	0022263	1/10/2003 0:00	Document Delivery Form providing response to request 839 providing description of major network outages in year 2002
0022264	0022267	1/10/2003 0:00	Document Delivery Form providing response to request 840 providing IT Organizational Chart and IT IPS Performance Metrics for July 2001 and November 2002
0022268	0022424	1/17/2003 0:00	Document Delivery Form providing response to request WA 06 providing additional Premera and Premera BC Board and Committee minutes where conversion was discussed.
0022425	0022439	1/17/2003 0:00	Document Delivery Form providing response to request B106 providing additional agendas of board and committee meetings related to the proposed conversion.
0022440	0022450	1/17/2003 0:00	Document Delivery Form providing response to request B147 providing report for all 100+ groups showing MLR by group. Incurred period is 7/01 -6/02 and paid period is 7/01 - 9/02.
0022451	0022814		Document Delivery Form providing response to request E422 providing the Executive Module of the 2002 Mercer Integrated Health Networks (IHN Survey)
0022815	0023001		Document Delivery Form providing response to request E423 providing Blue Cross Blue Shield Module of the William Mercer 2002 Integrated Health Network (IHN) Compensation Survey
0023002			Document Delivery Form providing response to request E424 Because Mercer Human Resources Consulting provides an annual review of compensation for Premera executives, we do not purchase additional surveys related specifically to executive compensation
0023003			Document Delivery Form providing response to request E426 for job descriptions for executive vp, please refer to their employment contracts
0023004	0023017	1/17/2003 0:00	Document Delivery Form providing response to request E436 providing fee schedule provider news briefs for 2000 -2002
0023018	0023040	1/17/2003 0:00	Document Delivery Form providing response to request E437 providing code allowable sheets for 2000-

PREMERA DOCUMENT LOG

Req Bates	End Bates	Document Date	Title
0023041	0023586	1/17/2003 0:00	Document Delivery Form providing response to request WA 448 providing presentations dated April 2000 through December 2002 presented to Premera Board related to B&ST dimension project and presentations dated July 2000 to June 2001 presented to management at Premera
0023587	0023597		Document Delivery Form providing response to request E451 explanation of Premera's benefits contributions and benefit price tags for its qualified employee flexible benefit plan, explanation of Premera's benefits contributions for its other benefit plans including qualified retirement plans, and descriptions of Premera Executive perquisites
0023598	0024384	1/20/2003 0:00	Document Delivery Form providing response to request WA 16 providing solicitation permit application for issuance of stock by New Premera to Foundation Shareholder, issuance of stock of New Premera Blue Cross Corp., and Issuance of Stock of New Likewise Health Plan of Washington
0024385	0024401	1/20/2003 0:00	Document Delivery Form providing response to request B152/WA91 providing Premera Blue Cross Participating Dental Provider Contract, and Premera Blue Cross Blue Shield of Alaska Participating Dental Provider Contract
0024402	0024403	1/21/2003 0:00	Document Delivery Form providing response to request C213 providing PBC market share for each product group, last three years vs. top 5 competitors, Washington Market share as of 1999. Note the requested data is not available in-house for either Alaska or Oregon
0024404	0024599	1/21/2003 0:00	Document Delivery Form providing response to request C229 and C230 providing copies of the last regulatory exam report for each Premera entity and copies of any OIC orders/instructions for the last three years with actions taken to date for each.
0024600	0024686	1/21/2003 0:00	Document Delivery Form providing response to request E445 providing list of Premera jobs matched to the benchmark positions, five years of salary history for those jobs
0024687	0024812	1/21/2003 0:00	Document Delivery Form providing response to request E448 providing additional board and management presentations regarding corporate strategy and planning and related to the marketing of Dimensions plans
0024813	0024829	1/21/2003 0:00	Document Delivery Form providing response to request 841 providing copies of analyses run to determine the geographical area factors for the 1998, 1999 and 2002 small group rate filings in Alaska and Washington
0024830		1/24/2003 0:00	Document Delivery Form providing response to request WA 04 providing copies of presentations to the Board regarding market expansion and an update on the Arizona expansion
0024831	0024840	12/11/2002 0:00	Presentation to Board of Directors re: Arizona Update
0024841	0024865	8/14/2002 0:00	Presentation to Board of Directors re: Market Expansion
0024866		1/24/2003 0:00	Document Delivery Form providing response to request WA 5 providing copies of presentations re: Goldman Sachs role, the IPO process and managing a Public company, and the company's conversion and IPO
0024867	0024943	9/5/2002 0:00	Presentation to Premera Blue Cross regarding the company's conversion and IPO
0024944	0024987	8/9/2002 0:00	Presentation to Premera regarding the IPO process and managing a public company
0024988	0025049	6/11/2002 0:00	Presentation to Premera regarding Goldman Sachs' role as financial advisor

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0025050	0025061	1/22/2003 0:00	Document Delivery Form providing response to request WA 5 providing a copy of the Goldman Sachs engagement letter dated 6/13/01, and presentation re: Discussion Materials Regarding Dilution
0025062	0025085	1/16/2003 0:00	Argument prepared by Goldman Sachs dated 11/21/02
0025063	0025116	4/12/1995 0:00	Document Delivery Form providing response to request WA 24A providing copy of historic GAAP audited statements for Premera for 1994 - 1996
0025086	0025117	2/16/1996 0:00	Premera and Affiliates Combined Financial Statements 12/31/94 and 12/31/93
0025117	0025144	2/7/1997 0:00	Combined Financial Statements of Premera and Affiliates as of 12/31/95 and 12/31/94
0025145	0025162	1/6/2003 0:00	Combined Financial Statements of Premera and Affiliates for years end 12/31/96 and 12/31/95
0025146	0025172	1/31/1991 0:00	Document Delivery Form providing response to request WA 25A providing historic audited statements for BC Washington and Alaska for years 1990 - 1996 and for MSC for years 1990 - 1996
0025163	0025182	1/31/1992 0:00	Blue Cross of Washington and Alaska and Subsidiary Consolidated Financial Statements for 12/31/90 and 12/31/89
0025173	0025193	1/29/1993 0:00	Blue Cross of Washington and Alaska and Subsidiary Consolidated Financial Statements for 12/31/91 and 12/31/90
0025183	0025215	1/31/1994 0:00	Blue Cross of Washington and Alaska and Subsidiary Consolidated Financial Statements for 12/31/92 and 12/31/91
0025194	0025244	2/10/1995 0:00	Blue Cross of Washington and Alaska and Subsidiary Consolidated Financial Statements for 12/31/93 and 12/31/92
0025216	0025272	2/16/1996 0:00	Blue Cross of Washington and Alaska and Subsidiary Consolidated Financial Statements for 12/31/94 and 12/31/93
0025245	0025300	2/7/1997 0:00	Blue Cross of Washington and Alaska and Subsidiary Consolidated Financial Statements for 12/31/95 and 12/31/94
0025273	0025322	1/29/1992 0:00	Blue Cross of Washington and Alaska and Subsidiary Consolidated Financial Statements for 12/31/96 and 12/31/95
0025301	0025344	1/28/1993 0:00	Blue Cross of Washington and Alaska and Subsidiary Consolidated Financial Statements for 12/31/96 and 12/31/95
0025323	0025371	1/28/1994 0:00	Medical Service Corporation of Eastern Washington Consolidated Financial Report for years ended 12/31/91 and 12/31/90
0025345	0025400	1/27/1995 0:00	Medical Service Corporation of Eastern Washington Consolidated Financial Report for years ended 12/31/92 and 12/31/91
0025372	0025422	1/26/1996 0:00	Medical Service Corporation of Eastern Washington Consolidated Financial Report for years ended 12/31/93 and 12/31/92
0025401	0025457	1/31/1997 0:00	Medical Service Corporation of Eastern Washington Consolidated Financial Report for years ended 12/31/94 and 12/31/93
0025423	0025527	1/24/2003 0:00	Medical Service Corporation of Eastern Washington Consolidated Financial Report for years ended 12/31/95 and 12/31/94
			Medical Service Corporation of Eastern Washington Consolidated Financial Report for years ended 12/31/96 and 12/31/95
			Document Delivery Form responding to request WA 27 providing copies of historic lines of business reports for Blue Cross for years 1986 and 1990 - 1996

PREMERA DOCUMENT LOG

Req Bates	End Bates	Document Date	Title
Document Delivery Form responding to request B113 providing copies of all Premera Board and			
0025528		1/24/2003 0:00	Committee minutes for the last two years
0025529	0025542	10/18/2002 0:00	Premera Special Meeting of Board of Directors Minutes
0025543	0025556	10/18/2002 0:00	Premera Blue Cross Special Meeting of Board of Directors Minutes
0025557	00225565	10/6/2002 0:00	Premera and Premera Blue Cross Board of Director Meeting Minutes
0025566	0025586	8/14/2002 0:00	Premera and Premera Blue Cross Board of Director Meeting Minutes
0025587	0025592	1/24/2002 0:00	Premera Special Meeting of Board of Directors
0025593	0025625	2/14/2001 0:00	Premera and Premera Blue Cross Board of Director Meeting Minutes
0025626	0025627	10/31/2002 0:00	Premera Investment, Audit & Compliance Committee Interim Meeting Minutes
0025628	0025633	8/13/2002 0:00	Premera Investment, Audit & Compliance Committee Interim Meeting Minutes
0025634	0025636	7/30/2002 0:00	Premera Investment, Audit & Compliance Committee Interim Meeting Minutes
0025637	0025644	5/13/2002 0:00	Premera Investment, Audit & Compliance Committee Meeting Minutes
0025645	0025650	2/12/2002 0:00	Premera Investment, Audit & Compliance Committee Meeting Minutes
0025651	0025665	10/18/2002 0:00	Premera Special Meeting of Governance Committee Minutes
0025666	0025671	10/7/2002 0:00	Premera Special Meeting of Governance Committee
0025672	0025674	10/1/2002 0:00	Premera Special Meeting of Governance Committee
0025675	0025678	8/13/2002 0:00	Premera Governance Committee Meeting Minutes
0025679	0025682	5/13/2002 0:00	Premera Governance Committee Meeting Minutes
0025683	0025684	4/16/2002 0:00	Premera Governance Committee Meeting Minutes
0025685	0025687	4/2/2002 0:00	Premera Governance Committee Meeting Minutes
0025688	0025698	2/12/2002 0:00	Premera Governance Committee Meeting Minutes
0025699	0025701	1/23/2002 0:00	Premera Governance Committee Meeting Minutes
0025702	0025704	8/13/2002 0:00	Premera Quality Committee Meeting Minutes
0025705	0025708	5/13/2002 0:00	Premera Quality Committee Meeting Minutes
0025709	0025715	2/12/2002 0:00	Premera Quality Committee Meeting Minutes
0025716	0025717	10/31/2002 0:00	Premera Blue Cross Investment, Audit & Compliance Committee Meeting Minutes
0025718	0025723	8/13/2002 0:00	Premera Blue Cross Investment, Audit & Compliance Committee Meeting Minutes
0025724	0025726	7/30/2002 0:00	Premera Blue Cross Investment, Audit & Compliance Committee Meeting Minutes
0025727	0025734	5/13/2002 0:00	Premera Blue Cross Investment, Audit & Compliance Committee Meeting Minutes
0025735	0025741	2/12/2002 0:00	Premera Blue Cross Investment, Audit & Compliance Committee Meeting Minutes
0025742	0025756	10/18/2002 0:00	Premera Blue Cross Special Meeting of Governance Committee
0025757	0025762	10/7/2002 0:00	Premera Blue Cross Special Meeting of Governance Committee
0025763	0025765	10/1/2002 0:00	Premera Blue Cross Special Meeting of Governance Committee
0025766	0025769	8/13/2002 0:00	Premera Blue Cross Special Meeting of Governance Committee
0025770	0025773	5/13/2002 0:00	Premera Blue Cross Meeting of Governance Committee
0025774	0025778	4/16/2002 0:00	Premera Blue Cross Meeting of Governance Committee
0025776	0025778	4/2/2004 0:00	Premera Blue Cross Meeting of Governance Committee
0025779	0025789	2/12/2002 0:00	Premera Blue Cross Meeting of Governance Committee
0025790	0025792	1/23/2002 0:00	Premera Blue Cross Meeting of Governance Committee
0025793	0025801	12/11/2001 0:00	Premera Blue Cross Investment, Audit & Compliance Committee Meeting Minutes

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Beg Bates	End Bates	Document Date	Title
0025802	0025806	8/7/2001 0:00	Premiera Blue Cross Investment, Audit & Compliance Committee Meeting Minutes
0025807	0025812	5/8/2001 0:00	Premiera Blue Cross Investment, Audit & Compliance Committee Meeting Minutes
0025820	0025821	8/7/2001 0:00	Premiera Blue Cross Governance Committee Meeting Minutes
0025822	0025823	6/28/2001 0:00	Premiera Blue Cross Governance Committee Meeting Minutes
0025824	0025826	5/8/2001 0:00	Premiera Blue Cross Governance Committee Meeting Minutes
0025827	0025830	3/30/2001 0:00	Premiera Blue Cross Governance Committee Meeting Minutes
0025831	0025837	2/13/2001 0:00	Premiera Blue Cross Executive and Governance Committee Meeting Minutes
0025838	0025843	12/11/2001 0:00	Premiera Governance Committee Meeting Minutes
0025844	0025845	8/7/2001 0:00	Premiera Governance Committee Meeting Minutes
0025846	0025847	6/28/2001 0:00	Premiera Governance Committee Meeting Minutes
0025848	0025850	5/8/2001 0:00	Premiera Governance Committee Meeting Minutes
0025851	0025854	3/30/2001 0:00	Premiera Governance Committee Meeting Minutes
0025855	0025862	2/13/2001 0:00	Premiera Executive and Governance Committee Meeting Minutes
0025863	0025870	12/11/2001 0:00	Premiera Investment, Audit & Compliance Committee Meeting Minutes
0025871	0025875	5/8/2001 0:00	Premiera Investment, Audit & Compliance Committee Meeting Minutes
0025882	0025888	2/13/2001 0:00	Premiera Investment, Audit & Compliance Committee Meeting Minutes
0025889	0025891	8/7/2001 0:00	Premiera Quality Committee Meeting Minutes
0025892	0025894	5/8/2001 0:00	Premiera Quality Committee Meeting Minutes
0025895	0025897	2/13/2001 0:00	Premiera Quality Committee Meeting Minutes
			Document Delivery Form responding to request number C 224 providing total claim inventory counts, estimated amount billed and expected amount paid for year end 2000, year end 2001 and month end for each month of 2002. Premera does not have data onsite to calculate monthly or quarterly claims pipeline for 2000 and 2001.
0025898	0025899	1/23/2003 0:00	Document Delivery Form responding to request number C249 - investment policies were provided as part of request WA 100
0025900		1/21/2003 0:00	Document Delivery Form responding to request number C250 for summary of portfolio rating and type of asset for each of the last three years see requests E404, Z836 and Z837, and asset type for 12/31/00, 1/21/2003 0:00 12/31/01 and 9/30/02. For 1999 see schedule D's in request #20
0025901		1/21/2003 0:00	Document Delivery Form responding to request number C251 providing a description of any external asset management relationships
0025902	0025903	1/21/2003 0:00	Document Delivery Form responding to request number C252 - for investment losses and or write downs funding the last three years see WA 97 for 1997 through 6/30/02, See 101 for 6/30/02 and 9/30/02, and C253 for 12/31/02
0025904		1/21/2003 0:00	Document Delivery Form responding to request number C253 providing current problem asset watch list for PBC, SWL, LW-WA, LW-OR, MSC Life as of 12/31/02
0025905	0025944	1/21/2003 0:00	Document Delivery Form responding to request number E 450 providing copies of Premera Board and 8/16/2000 0:00 Committee minutes where the Dimensions plans were discussed.
0025945	0025965	1/24/2003 0:00	Premiera Blue Cross Board of Director Meeting Minutes
0025946	0025983	12/6/2000 0:00	Premiera Board of Directors Meeting Minutes

PREMERA DOCUMENT LOG

Ref Bates	End Bates	Document	Date	Title
0025984	0025985	Document Delivery Form responding to request number E 409 and E 464 providing sale/leaseback agreement details for 97 - 01 and B& ST agreements for 01 and 02	1/21/2003 0:00	
0025986	0025988	Document Delivery Form responding to request number E460 providing AR balances greater than \$5 million as of 9/30/02 or 12/31/01 and description of balance	1/21/2003 0:00	
0025989	0025994	Document Delivery Form responding to request number E461 providing 12/31/01 prepaid expense reconciliation, 9/30/02 prepaid expense reconciliation and explanation for E & O and D & O prepaid balance	1/21/2003 0:00	
0025995	0026056	Document Delivery Form responding to request number E463 providing most recent actuarial report regarding company's pension plan	1/21/2003 0:00	
0026057	0026059	Document Delivery Form responding to request number 471 providing expiration schedules of net operating loss carry forward and AMT credit carry forward	1/21/2003 0:00	
0026060	0026063	Document Delivery Form responding to request number E 472 providing investment allocation/portfolio composition as of 12/31/02, list of asset managers and portfolio size at 12/31/03 and duration analysis as of 12/31/03	1/21/2003 0:00	
0026064	0026065	Document Delivery Form responding to request number Z805A providing electronic version of 9/30/02 YTD administrative costs by line of business by cost center.	1/21/2003 0:00	
0026066		Document Delivery Form responding to request number WA 20A providing historic statutory annual statements	1/16/2003 0:00	
0026067	0026136	Annual Statement of Blue Cross of Washington and Alaska	12/31/1990 0:00	
0026137	0026218	Annual Statement of Blue Cross of Washington and Alaska	12/31/1991 0:00	
0026219	0026331	Annual Statement of Blue Cross of Washington and Alaska	12/31/1992 0:00	
0026332	0026437	Annual Statement of Blue Cross of Washington and Alaska	12/31/1993 0:00	
0026438	0026561	Annual Statement of Blue Cross of Washington and Alaska	12/31/1994 0:00	
0026562	0026736	Annual Statement of Blue Cross of Washington and Alaska	12/31/1995 0:00	
0026737	0026916	Annual Statement of Blue Cross of Washington and Alaska	12/31/1996 0:00	
0026917	0026998	Annual Statement of States West Live Insurance Company	12/31/1990 0:00	
0026999	0027061	Annual Statement of States West Live Insurance Company	12/31/1991 0:00	
0027062	0027134	Annual Statement of States West Live Insurance Company	12/31/1992 0:00	
0027135	0027220	Annual Statement of States West Live Insurance Company	12/31/1993 0:00	
0027221	0027319	Annual Statement of States West Live Insurance Company	12/31/1994 0:00	
0027320	0027427	Annual Statement of States West Live Insurance Company	12/31/1995 0:00	
0027428	0027530	Annual Statement of States West Live Insurance Company	12/31/1996 0:00	
0027531	0027634	Annual Statement of States West Live Insurance Company	12/31/1994 0:00	
0027635	0027753	Annual Statement of MSC Life Insurance Company	12/31/1995 0:00	
0027754	0027860	Annual Statement of MSC Life Insurance Company	12/31/1996 0:00	
0027861	0027955	Annual Statement of MSC Life Insurance Company	12/31/1994 0:00	
0027956	0028068	Annual Statement of Pacific Health and Life Insurance Company	12/31/1995 0:00	
0028069	0028183	Annual Statement of Pacific Health and Life Insurance Company	12/31/1996 0:00	
0028184	0028255	Annual Statement of Medical Service Corporation	12/31/1990 0:00	
0028256	0028331	Annual Statement of Medical Service Corporation	12/31/1991 0:00	

PREMERA DOCUMENT LOG

Req Bates	End Bates	Document Date	Title
0028332	0028414	12/31/1992 0:00	Annual Statement of Medical Service Corporation
0028415	0028511	12/31/1993 0:00	Annual Statement of Medical Service Corporation
0028512	0028638	12/31/1994 0:00	Annual Statement of Medical Service Corporation
0028639	0028748	12/31/1995 0:00	Annual Statement of Medical Service Corporation
0028749	0028853	12/31/1996 0:00	Annual Statement of Medical Service Corporation
0028813	0025819	2/13/2001 0:00	Premiera Blue Cross Investment, Audit & Compliance Committee Meeting Minutes
0028854	0028892	12/31/1990 0:00	Annual Statement of HealthPlus
0028893	0028930	12/31/1991 0:00	Annual Statement of HealthPlus
0028931	0028964	12/31/1992 0:00	Annual Statement of HealthPlus
0028965	0029003	12/31/1993 0:00	Annual Statement of HealthPlus
0029004	0029042	12/31/1994 0:00	Annual Statement of HealthPlus
0029043	0029087	12/31/1995 0:00	Annual Statement of HealthPlus
0029088	0029129	12/31/1996 0:00	Annual Statement of HealthPlus
0029130	0029131	1/28/2003 0:00	Document Delivery Form providing response to request 26B - revised split PL file with Washington, Alaska and other split out.
0029132	0029136	1/28/2003 0:00	Document Delivery Form providing response to request 27B providing historic line of business reports for MSC for 1991 and 1992
0029137	0029138	1/28/2003 0:00	Document Delivery Form providing response to request WA 110
0029139	0029230	1/24/2003 0:00	Document Delivery Form providing response to request C206 providing copy of organizational charts by vice president
0029231	0029232	1/24/2003 0:00	Document Delivery Form providing response to request 242 providing historical and proposed accounting changes and rationale (statutory and GAAP)
0029233	0029256	1/24/2003 0:00	Document Delivery Form providing response to request C254 providing information technology panel presentation to Board on 8/13/02, and individual meetings were held with Al Smith and all his direct VP reports during month of December 2002.
0029257	0029258	1/24/2003 0:00	Document Delivery Form providing response to request D301 providing chart showing overlap of number of providers in Dimensions networks and existing HMO, PPO and PAR plan networks
0029259	0029260	11/14/2002 0:00	Document Delivery Form providing response to request D302 providing list of networks excluded from data response in connection with printout of number and type of provider contracts in each network by county and provides reasons for exclusion.
0029261	0029311	1/23/2003 0:00	Document Delivery Form providing response to request E462 providing custodial reports supporting the assets in accounts 14200, 14210, 14205, 14215, 14216, reconciliation of accounts 14200, 14210, and actuarial report for DB SRP plan
0029312		1/28/2003 0:00	Document Delivery Form providing response to request E466 providing CD with electronic version of forecasting model with all formulas and assumptions.
0029313		1/28/2003 0:00	Document Delivery Form providing response to request 467 - see E466 for forecasting model with all formulas and assumptions
0029314		1/28/2003 0:00	Document Delivery Form providing response to request 470 see E466 for forecasting model and Split PL file.

PREMERA DOCUMENT LOG

Req Bates	End Bates	Document Date	Title
0029315		1/28/2003 0:00	Document Delivery Form providing response to request 484 RVCM is consistent with the audited financial statements at the net income level and reflects the accounting practices currently in use. The crosswalk tabs detail the reclasses necessary to get to the audited statements. The 2002 RVCM will agree to the 2002 audited statements
0029316		1/28/2003 0:00	Document Delivery Form providing response to request 485 - annual statements are prepared on a statutory basis while the financial information in request #26 is on a GAAP basis. Refer to the splitPL file for the reconciliation of #26 to audited statements and request #23 for the GAAP to STAT reconciliation.
0029317		1/28/2003 0:00	Document Delivery Form providing response to request 486 - the \$611K on the quality solutions premium revenue line for outlook 2002 should be reported as zero. However, since the cell was not picked up in the consolidated total, the consolidated total will not change and is correct.
0029318	0029320	1/28/2003 0:00	Document Delivery Form providing response to request 488 - the reconciliation provided in request #814 was for Premera BC ERPP. States West Life has a 9/30/02 ERPP balance of \$1.7 million for certain groups life, dependant life, short term disability and stop loss coverage's. SWL, ERPP reconciliation as 9/30/02 and 12/31/01, The Premera BC reconciliation's were provided for Request #814
0029321	0029322	1/28/2003 0:00	Document Delivery Form providing response to request 489 - providing narrative on claims paid for ASC
0029323	0029326	1/28/2003 0:00	Document Delivery Form providing response to request 490 providing revenue recognition for noninsured business gross versus net memo
0029327	0029328	1/28/2003 0:00	Document Delivery Form providing response to request 492 providing narrative regarding estimates from outside actuaries Watson Wyatt for FAS 106 expense.
0029329	0029330	1/28/2003 0:00	Document Delivery Form providing response to request 493 - providing narrative re: Premera getting estimate from outside actuaries Watson Wyatt for pension expense.
0029331	0029339	2/2/2003 0:00	Document Delivery Form responding to request WA 03 providing organization chart showing organizational history of Premera, 1933 to present.
0029340		2/4/2003 0:00	Document Delivery Form providing response to request WA 06 providing copies of Premera Blue Cross Board and Committee minutes.
0029341	0029358	5/15/2002 0:00	Premera Blue Cross Board of Director Meeting Minutes
0029359	0029366	5/14/2002 0:00	Premera Blue Cross Special Meeting of Board of Directors Minutes
0029367	0029381	2/12/2002 0:00	Premera Blue Cross Board of Director Meeting Minutes
0029382	0029387	1/24/2002 0:00	Premera Blue Cross Special Meeting of Board of Director Minutes
0029388	0029399	1/12/2001 0:00	Premera Blue Cross Board of Director Meeting Minutes
0029400	0029405	9/9/2001 0:00	Premera Blue Cross Board of Director Meeting Minutes
0029406	0029419	8/8/2001 0:00	Premera Blue Cross Board of Director Meeting Minutes
0029420	0029437	5/9/2001 0:00	Premera Blue Cross Board of Director Meeting Minutes
0029438	0029440	1/23/2002 0:00	Premera Blue Cross Governance Committee Meeting Minutes
0029441	0029451	2/12/2002 0:00	Premera Blue Cross Governance Committee Meeting Minutes

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Appendix 1 - Premera - Log

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0029452	0029453	1/30/2003 0:00	Document Delivery Form providing response to request WA 112 providing schedule on severance and other payroll expenses not otherwise payable under a qualified or non-qualified plan
0029454	0029510	1/30/2003 0:00	Document Delivery form providing response to request WA 120 and 121 providing summary of lawsuits against Premera and initiated by Premera
0029511		2/1/2003 0:00	Document Delivery form providing response to request 219 - see response to request 483
0029512	0029784	2/4/2003 0:00	Document Delivery Form providing response to request E 448 providing additional presentations regarding Dimensions
0029786	0029795	2/1/2003 0:00	Document Delivery Form responding to request 465 providing response to questions by Marcus Garrett in memo-e-mail dated 1/6/03; schedule of \$195,282 broken out by account; and schedule of unrealized gains/losses as of 9/30/02
0029796	0029797	1/30/2002 0:00	Document Delivery Form responding to request E468 providing schedule of projected premium taxes for Alaska 2002-2003 under the conversion and status quo
0029798	0029803	2/2/2003 0:00	Document Delivery Form providing response to request E476 providing 2/13/02 presentation to Premera Board re: conversion and post-conversion expenses.
0029804	0029805	2/1/2003 0:00	Document Delivery Form providing response to request 477 - narrative stating that request 466 provided electronic version of the forecasting model. The formulas for the G&A expenses are detailed in this model. Overall assumption was made to gain efficiencies in G&A as a percent of revenue. No detail projections were made by type of G&A expense.
0029806	0029807	1/31/2003 0:00	Document Delivery Form providing response to request 480 providing schedule showing net investment income and gain on sale of securities for requests 26 and 74 allocated to WA, AK and other.
0029808		2/1/2003 0:00	Document delivery form providing response to request 482 instructing to see information supplied as part of requests Z805 and Z842 which has G&A expenses by line of business by cost center.
0029809	0029810	1/29/2003 0:00	Document Delivery Form providing response to request E487 - The Risk and Contingent Charge is an annual amount that represents an overall risk and uncertainty estimate for the projection and is not allocated to lines of business. This amount represents less than 1% of premiums each year.
0029811	0029812	1/28/2003 0:00	Document Delivery Form providing response to request 491 - providing narrative re: the Company has a nonqualified defined contribution plan, nonqualified defined benefit retirement plan and a deferred compensation plan covering officers and/or executive management.
0029813		2/1/2003 0:00	Document Delivery Form providing response to request 494 - The tax benefit netted against the unrealized gain/loss in OCI at 9/30/02 was a debit balance of \$1,630,154.
0029814	0029824	1/28/2003 0:00	Document delivery form providing response to request 495 - the difference between the GAAP and STAT fair value of fixed income securities as both 9/30/02 and 12/31/01 is due to the statutory valuation provided by the Securities Valuation Office of the NAIC being different that the valuation provided by Bank of New York for GAAP purposes. Also provides 12/31/01 and 9/30/02 documentation of reconciliation of Schedule Ds to GL for PBC, SWL, LWO, LWV, MSL for book value

PREMERA DOCUMENT LOG

Req Bates	End Bates	Document Date	Title
0029825	0029826	2/1/2003 0:00	Document Delivery Form providing response to request Z842 - Electronic version of 9/30/02 YTD administrative costs by line of business by cost center with FEP AK, Med Supp AK, ASC AK, MMP AK, MMP WVA and MMP EWA broken out.
0029827	0029844	2/5/2004 0:00	Document Delivery Form providing response to request number WA 03 - providing summary of significant corporate transactions for each Premera Entity.
0029845	0029912	2/11/2003 0:00	Document Delivery Form providing response to request number WA 28 - providing December 2002 officer's financial & operational review
0029913	0029921	2/4/2003 0:00	Document Delivery Form providing response to request number WA 109 - providing copy of employment agreement between Premera and Brian Ancell.
0029922		2/10/2002 0:00	Document Delivery Form providing response to request number C 264 - for information re: post conversion operations see strategy presentations included in WA 04 and financial projection model filed in Exhibit 7 of Form A and in WA 74; a history of the company's organizational structure is found in request WA 3.
0029923		2/10/2003 0:00	Document Delivery Form providing response to request number C 265 - information for this request can be found as the response to previous request C 208.
0029924		2/10/2003 0:00	Document Delivery Form providing response to request number C 267 - External reserve certifications were previously described in response to request C 233. All external reserve certifications can be found as part of Premera's annual Statutory Statements
0029925		2/10/2003 0:00	Document Delivery Form providing response to request number C 268 - WA 38 addresses NAIC IRIS ratios. C247 addresses bank lines and additional liquidity.
0029926	0029946	2/7/2003 0:00	Document Delivery Form providing response to request number E 430 - providing membership and billing reports requested by Kristian Magnani in December 2002.
0029947	0030056	2/7/2003 0:00	Document Delivery Form providing response to request number E 430 - providing listing and examples of reports used in the membership and billing process. Including individual EOS reports, group membership and billing reports and Blue Chip system reports.
0030057		1/28/2003 0:00	Document Delivery Form providing response to request number E 473 - providing calculation of potential exit fees related to severance of relationship with BCBSA for total of \$22,811,100.
0030058	0030078	2/6/2003 0:00	Document Delivery Form providing response to request number 469 providing pension disclosure as of 12/31/02 from Watson Wyatt.
0030079	0030080	2/6/2003 0:00	Document Delivery Form providing response to request number E 475 - providing schedule and detail on historical "other income" and "other expenses".
0030081	0030082	2/6/2003 0:00	Document Delivery Form providing response to request number 483 providing RVCN OIC file with Med Supp AK and FEP AK broken out for 1997 and 1998. Also RVCN has been updated to include 12/31/02 year to date information
0030083	0030092	2/10/2003 0:00	Document Delivery Form providing response to request number - Exhibit B questions- providing Premera's answers to consultant questions.
0030093	0030239	2/10/2003 0:00	Document Delivery Form providing response to request number WA 13 - providing copies of additional correspondence between Premera and BCBSA regarding proposed conversion transaction.

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Appendix 1 - Premera P - Log

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document	Date	Title
0030240		Document Delivery Form providing response to request number B104 - a discussion of projected costs associated with being a public company was submitted in response to request E476 bates range 29798 - 29803.	2/11/2003 0:00	29803.
0030241	0030295	Document Delivery Form providing response to request number E 411 - providing a copy of Guidelines to Administer Membership Standards Applicable to Regular Members.	2/10/2003 0:00	
0030296	0030297	Document Delivery Form providing response to request number 459 - providing budget versus actual analysis of costs related to the Facet system by year.	2/11/2003 0:00	
0030298	0030299	Document Delivery Form providing response to request number E 481 - providing schedule and detail on historical other income and other expenses by state.	2/11/2003 0:00	
0030300	0030326	Document Delivery Form providing response to request number 844 - providing list of Alaska contracts and their renewal dates.	2/10/2003 0:00	
0030327	0030341	Document Delivery Form providing response to request number 854 - providing 12/31/02 GAAP MD&A, and 12/31/02 Balance sheet, Income Statement, Changes to Equity and Cash Flow	2/12/2003 0:00	
0030342	0030357	Document Delivery Form providing response to request number WA 13 - providing additional correspondence between Premera and BCBSA regarding the conversion.	2/13/2003 0:00	
0030358	0030360	Document Delivery Form providing response to request number WA 25 for response to this request see bates ranges 15757 - 15959, 21812 - 21839, and 25145 - 25422.	2/13/2003 0:00	
0030361		Document Delivery Form providing response to request number WA 27 - Premera believes that this item is complete as of 2/13/03	2/13/2003 0:00	
0030362		Document Delivery Form providing response to request number WA 36 - Premera follows NAIC prescribed statements of statutory accounting principles in preparing its statutory financials.	2/12/2003 0:00	
0030363		Document Delivery Form providing response to request number WA 115 - Re-confirming that there have been no federal security filings in regard to Premera's proposed conversion and proposed IPO.	2/12/2003 0:00	
0030364		Document Delivery Form providing response to request number C 213 - Premera has provided 1999 data for Washington and does not have similar reports for Oregon and Alaska.	2/12/2003 0:00	
0030365	0030368	Document Delivery Form providing response to request number C228 - providing description of Premera Complaint and Appeals process, and description of availability of complaint data.	2/13/2003 0:00	
0030369		Document Delivery Form providing response to request number C 255 - For discussion of Premera's current system focus and areas of future focus see response to request C254, schedule of projected capital expenditures at WA 78, as of 2/11/03 a more detailed analysis of systems needs and timing does not exist.	2/11/2003 0:00	
0030370	0030409	Document Delivery Form providing response to request number C 266 - providing commission addenda for each product, and description of different commission structures for all products.	2/12/2003 0:00	
0030410		Document Delivery Form providing response to request number E 474 Sale/leaseback schedule was previously provided in response to request E409, none of the sale/leaseback arrangements in place as of 2/12/2003 0:00 12/31/02 have terms that extend into 2007, Premera believes item is complete as of 1/28/02.	2/12/2003 0:00	

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0030411		2/12/2003 0:00	845 are found as part of answers to Exhibit B item numbers 5, 6, and 7 bates range 30083 - 30092.
0030412		2/12/2003 0:00	Document Delivery Form providing response to request number 845 - answers to questions in request 846 are found as part of the answers to Exhibit B item number 8, bates range 30083 - 30092
0030413		2/13/2003 0:00	Document Delivery Form providing response to request number WA 89C - follow-up response for 89C is an exact duplicate of the follow-up request to D304.
0030414		1/12/2003 0:00	Document Delivery Form providing response to request number E479 - conference calls to discuss financial results for 2002 are scheduled for February 24 and 25, 2003
0030415		1/12/2003 0:00	Document Delivery Form providing response to request number E464 Premera has provided information to fulfill this request on January 28, 2003 bates range 25984 - 25985
0030416		2/12/2003 0:00	Document Delivery Form providing response to request number WA 65 - complete copies of all Premera rate filings for 2000 - 2002 were provided at bates range 12654 - 15552.
0030417		2/12/2003 0:00	Document Delivery Form providing response to request number E 409 - information previously provided on January 26, 2003 and January 28, 2003 at bates range 20544 - 20545.
0030418	0030435	2/13/2003 0:00	Document Delivery Form providing response to request number E 443 - providing copy of response to request for determination of tax liability by Premera to State of Washington
0030436	0030438	2/10/2003 0:00	Document Delivery Form providing response to request number 861 - providing tax basis of assets and liabilities immediately preceding the merger (tax adjustments only) and taxable income of PHP for the 5 years preceding the merger.
0030439	0030442	2/5/2003 0:00	Document Delivery Form providing response to request number 860 providing copy of contingency analysis as of 12/31/02
0030443	0030446	2/12/2003 0:00	Document Delivery Form providing response to request number 859 providing copy of support for valuation allowance NOL.
0030447	0030448	2/5/2003 0:00	Document Delivery Form providing response to request number 858 - providing copy of effect of the non-life status of SWL on the realization of the regular tax NOL CF
0030449	0030453	2/5/2003 0:00	Document Delivery Form providing response to request number 857 providing copy of non-Blues taxable income 1997 - 2001
0030454	0030456	2/14/2003 0:00	Document Delivery Form providing response to request number 855 - providing copy of MSC adjusted surplus
0030457	0030532	2/13/2003 0:00	Document Delivery Form providing response to request number WA 49, E 438, and E 439, providing copy of Long-Form Opinion.
0030533		2/17/2003 0:00	Document Delivery Form providing response to request number WA 20 - Premera has provided all Statutory Annual Statements in its possession.
0030534		2/12/2003 0:00	Document Delivery Form providing response to request number WA 36 - Premera follows NAIC prescribed statements of statutory accounting principles in preparing its statutory financials.
0030535	0030574	2/14/2003 0:00	Document Delivery Form providing response to request number WA 53, B 108, B 109, E 441, E 452, and E 453, providing calculations and assumptions underlying calculations performed to model impact of sections 382 and 833 on effective tax rate.

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
			Document Delivery Form providing response to request number B 141 Premera has not received copies of all consultants executed engagement terms thereby cannot provide complete detail for its assumptions re: detailed listing of and supporting documentation for, estimated transaction costs that will be incurred by Premera and its affiliates.
0030575	0030576	2/18/2003 0:00	Document Delivery Form providing response to request number C 214 providing list of top 10 agents for each of the last three years by product group for States West Life by year by Premium (2000 - 2002), Long Term Care Individual - WA and AK (2001 and 2002), Matrix detailing Premera products and availability of data to rank brokers with explanation of deficiencies.
0030577	0030590	2/18/2003 0:00	Document Delivery Form providing response to request number C222 - Premera believes it has provided responsive documentation in response to request. It is unclear what additional information is being requested.
0030581		2/13/2003 0:00	Document Delivery Form providing response to request number C 260 - for purposes of responding to this request, Premera has interpreted the phrase plans to acquire to mean potential transactions in which Premera, with approval of its board, has entered into a mutual non-disclosure agreement with a third party as a precursor to a potential acquisitive. As such Premera has no plans to acquire other health plans or other businesses anywhere.
0030582		2/18/2003 0:00	
0030583		2/13/2003 0:00	Document Delivery Form providing response to request number C 263 - Premera asked for clarification of his request at January 7, 2002 meeting and has not received a response as of February 13, 2003.
			Document Delivery Form providing response to request number E 403 - Premera has asked for the rationale for his request given 1) the terms of the agreement have been previously discussed and are modeled in the WA 74 financial projections and 2) the prohibition o disclosure due to confidentiality obligations contained in the contract. Premera awaits a response from consultants in order to respond to this request.
0030584		2/13/2003 0:00	
			Document Delivery Form providing response to request number E425 - Consultant follow up response states "we need an organization chart mapping current incumbents hierarchy, title, reporting relationships and function areas for VPs and higher. As part of the response to C206 on 1/31/03, Premera provided organization charts at the Vice President level.
0030585		12/16/2002 0:00	
0030586	0030588	2/18/2003 0:00	Document Delivery Form providing response to request number E454 providing a copy of the memorandum re: Section 337(d).
0030589	0030590	2/18/2003 0:00	Document Delivery Form providing response to request number B 160 - providing electronic copy of Alaska membership for 12/02,01,00 by line of business, group name, zip code and county.
0030591		2/18/2003 0:00	Document Delivery Form providing response to request number B 161 - see response to request 160
			Document Delivery Form providing response to request number E 432 electron copy of the number of Premera enrollees, total premiums paid by or for those enrollees, and total claims by category of provider for those enrollees separately for each LOB for each county in Washington.
0030592	0030594	2/19/2003 0:00	
0030595	0030596	2/18/2003 0:00	Document Delivery Form providing response to request number E 434 providing an electronic copy of June 1998 members by line of business, county and region.

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PREMERA DOCUMENT LOG

Req Bates	End Bates	Document	Date	Title
0030597	0031169	2/19/2003 0:00	Document Delivery Form providing response to request number E 446, E 447, and E 449 - providing materials related to Premera's Dimensions plans, including information related to financial performance, competitive analyses and correspondence.	
0031170	0031427	2/19/2003 0:00	Document Delivery Form providing response to request number WA 99, C249-253 providing year end summaries of investment performance for 1997 - 2002 as presented to Premera's investment, audit and compliance committee	
0031428	0031635	2/20/2003 0:00	Document Delivery Form providing response to request number E446, E447, and E449 providing materials related to Premera's Dimensions plans, including information related to financial performance competitive analyses and other correspondence	
0031636	0031638	2/20/2003 0:00	Document Delivery Form providing response to request number 842b providing copy of email to Kim Jacobson dated 1/27/03, in response to item 842b re: admin through September request Z805A	
0031639		2/20/2003 0:00	Document Delivery Form providing response to request number 849 Premera has sought clarification from PWC as to whether the information in this request is still necessary. To date, Premera has not received a response.	
0031640	0031642	2/20/2003 0:00	Document Delivery Form providing response to request number WA 4 providing page from Operations Update from August 26, 1999 United and QualMed's plans for existing Washington Market. And page from Operations Update from December 1, 1999 mentioning QualMed's plans for exiting Washington Market.	
0031643	9931762	2/20/2003 0:00	Document Delivery Form providing response to request number WA 4 providing copy of presentations made to Premera Board of Directors at Annual retreat October 11 - 12, 1999	
0031763	0031935	2/21/2003 0:00	Document Delivery Form providing response to request number WA 05 providing copies of additional correspondence and materials between Premera and Goldman Sachs	
0031936	0032143	2/21/2003 0:00	Document Delivery Form providing response to request number WA 13 - providing information on history of FTC antitrust concerns about physician and hospital control of Blue Plans, Public BCBSA statements on North Carolina Conversion, BCBSA minutes from 1971 re: non-provider majority requirement for plan boards, R Wilson email dated July 2, 2002 re: summary of BCBSA conversion provision requirements.	
0032144		2/20/2003 0:00	Document Delivery Form providing response to request number WA 74 providing a follow-up request for STAT reconciliation for the projection model. Premera does not do STAT projections. STAT adjustments to calculate capital surplus can be found in the projection model on the consolidated model page (Line 213).	
0032172	0032194	2/12/2003 0:00	Document Delivery Form providing response to request number WA 128 providing copy of 6/27/02 decision to become publicly held Q&A, 9/4/02 conversion public hearings memo and FAQ, 11/02 conversion update from Gubby Barlow, 12/13/02 consumer group rally memo, 1/23/03, premere in the news (WSHA suit) memo, and 2/14/03, conversion update memo.	
0032195		2/20/2003 0:00	Document Delivery Form providing response to request number C219 Premera has provided this information using GAAP in response to request E483. Premera does not do STAT financials by line of business.	

PREMERA DOCUMENT LOG

Req Bates	End Bates	Document Date	Title
0032196	0032197	2/20/2003 0:00	Document Delivery Form providing response to request number 843 providing estimate of Premera ASO market share and listing of primary ASO competitors.
0032198	0032207	2/24/2003 0:00	Document Delivery Form providing response to request number WA 109, C209-211 providing copy of employment agreement for Kent Marquardt
0032208	0032245	2/21/2003 0:00	Document Delivery Form providing response to request number E 427A providing supplement copies of GL detail for revenue accounts for source date in tab Premium per RVCM
0032246	0032247	2/21/2003 0:00	Document Delivery Form providing response to request number 863 providing electronic copy of AK from A financials which shows GASP to STAT. (note CD not attached.)
0032248		2/24/2003 0:00	Document Delivery Form providing response to request number WA C204 providing summary of major joint venture arrangements including revenue and pre-tax profit contribution for the last three years
0032249		2/24/2003 0:00	Document Delivery Form providing response to requests which discuss Dimensions at E448, Premera systems strategy at C254, and Premera's work with Goldman Sachs at WA05
0032250		2/26/2003 0:00	Document Delivery Form providing response to request number WA 05 - documents that have been provided in request WA04 are authored by Goldman Sachs are the only presentations that have been made to the Premera Board of Directors
0032251	1	2/26/2003 0:00	Document Delivery Form providing response to request number WA 13 Premera has provided all correspondence in its possession, subject to those items listed on Premera's privilege log, between it and the BCBSA related to the proposed conversion and related or alternative transaction.
0032252		2/26/2003 0:00	Document Delivery Form providing response to request number WA 74 Per ties February 25, 2003 meeting with consultants, Premera will be providing a revised 2003 budget and projections through 2007 by 3/7/03, also see 868.
0032253	0032272	2/26/2003 0:00	Document Delivery Form providing response to request number WA 128 providing July 2002 Premera Connection Employee Newsletter, Gubby Barlow's opening remarks for broker symposium, and current and proposed structure diagram used in various meetings to discuss the transaction structure.
0032273		2/24/2003 0:00	Document Delivery Form providing response to request number C201 which asks for 3 years of strategic and or business plans. Premera does not use business plans in its strategic planning. Ask for clarification from consultants.
0032274		2/26/2003 0:00	Document Delivery Form providing response to request number C234 There have been no actuarial appraisals as to the value of the company or any lines of business performed within the last three years.
0032275	0032284	2/26/2003 0:00	Document Delivery Form providing response to request number C246 - PPFSC report dated 10/9/97 regarding BCWA, letter to Betty Woods dated 1/21/99 re: PPFSC monitoring and letter to Betty Woods dated 4/13/00 re PPFSC monitoring
0032285	0032289	2/26/2003 0:00	Document Delivery Form providing response to request number E 445 providing copy of five year salary histories for all Premera benchmark jobs.

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0032290	0032291	2/22/2003 0:00	Document Delivery Form providing response to request number E 457 providing electronic version of Draft Schedule D as of 12/31/02 for PBC, LifeWise OR, LiveWise WA, MSC Life and SWL (note electronic version not attached)
0032292	0032292	2/22/2003 0:00	Document Delivery Form providing response to request number E458 - Work paper from 1999 property valuation
0032296	0032297	2/22/2003 0:00	Document Delivery Form providing response to request number Z862 providing electronic version of 2003 by line of business, market business segment and entity. (note CD not attached.)
0032298	0032301	2/26/2003 0:00	Document Delivery Form providing response to request number 866 providing Premera answers to questions raised by Consultants in advance of 2/25/03 cost allocation meeting.
0032302	0032318	3/4/2003 0:00	Document Delivery Form providing response to request number WA04 providing 2003 Strategic Platform presentation as presented at Premera Performance and Outlook Meeting on February 26, 2003
0032319	0032321	3/4/2003 0:00	Document Delivery Form providing response to request number WA05 providing Additional correspondence between Premera and Goldman Sachs
0032322	0032323	3/3/2003 0:00	Document Delivery Form providing response to request number E434a providing electronic copy of June 1998 members by line of business, county, region, for Eastern WA counties
0032324	0032343	3/4/2003 0:00	Document Delivery Form providing response to request number 860 & 870 providing Additional materials related to the pricing of Premera's Dimensions plans. Included in the response to this request are the 2002 rate filings specific to the Dimensions plans. These documents were previously produced pursuant to WA65
0032324	0032343	3/4/2003 0:00	Document Delivery Form providing response to request number 860 & 870 providing Additional materials related to the pricing of Premera's Dimensions plans. Included in the response to this request are the 2002 rate filings specific to the Dimensions plans. These documents were previously produced pursuant to WA65
0032344	0032347	3/5/2003 0:00	Document Delivery Form providing response to request number E 432A providing for each county in Washington State the number of Premera enrollees, total premiums paid by for those enrollees and total claims by category of provider for those enrollees, separately for each LOB for the year 2001, and for the year to date 2002 on CD
0032348	0032349	3/5/2003 0:00	Document Delivery Form providing response to request number C213 providing chart reflecting Oregon Market share data as of 6/99
0032350	0032442	3/10/2003 0:00	Document Delivery Form providing response to request number WA 04 providing copies of presentations to be made by Premera management to A.M. Best at March 12, 2003 meeting
0032443	0032445	3/10/2003 0:00	Document Delivery Form providing response to request number WA 55 providing copy of memorandum dated 3/5/03 regarding changes to Premera's executive financial counseling program
0032446	0032486	3/7/2003 0:00	Document Delivery Form providing response to request number 865 providing copy of handout provided to consultants at February 24, 2003 financial follow-up meeting.
0032487	0032490	3/7/2003 0:00	Document Delivery Form providing response to request number 867 providing updated Premera projection model for the year end 2002, the 2003 revised budget, and the projections for period from 2004 through 2007.

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PREMERA DOCUMENT LOG

Req Bates	End Bates	Document	Date	Title
0032491	0032492	3/7/2003 0:00	Z805A	Document Delivery Form providing response to request number 868 providing complete cost allocation model for all of 2002 broken down by line of business as previously provided through 9/30/02 in request
0032493	0032494	3/12/2003 0:00	final Schedule D as of 12/31/02 for PBC	Document Delivery Form providing response to request number E457A providing: electronic version of
0032495	0032497	3/10/2003 0:00		Document Delivery Form providing response to request number 843 providing: ASO Market share estimates for Washington, Alaska and Oregon with listing of main competitors
0032498	0032541	3/13/2003 0:00		Document Delivery Form providing response to request number WA06 providing: December Board of Committee Minutes for Premera and Premera Blue Cross
0032542	0032543	3/13/2003 0:00		Document Delivery Form providing response to request number 242A providing: Historical and proposed accounting changes (statutory and GAAP) dollar impact.
0032544	0032545	3/13/2003 0:00		Document Delivery Form providing response to request number E432 providing: for each county in Washington State, provide, in electronic form, the # of Premera enrollees, total premiums paid by or for those enrollees, and total claims by category of provider for those enrollees, separately for each LOB for the year 2001, and for year to date 2002 (through November 2002)
0032546	0032553	3/13/2003 0:00		Document Delivery Form providing response to request number E445A providing: 1998, 1999, 2000 base salaries/annual bonuses earned/long-term incentives earned by the CEO, all EVP's, Jack McKrae and Curtis Taylor; 2002 annual bonus earned by the CEO, all EVP's, all SVP's and all Benchmark Jobs; 2002 long-term incentive earned by the CEO and all EVP's and all SVP's; Current executive deferred compensation account balances for the CEO, all EVP's and SVP's; In addition, the following key dates for each executive (date of birth, date of hire, date of promotion to SVP)
0032554	0032592	3/13/2003 0:00		Document Delivery Form providing response to request number 469A providing: FAS106 and DBSRP disclosure as of December 31, 2002 from Watson Wyatt our outside actuary
0032593	0032686	3/12/2003 0:00		Document Delivery Form providing response to request number 498 providing: GAAP to Stat worksheets as 12/31/02 for PBC, SWL, LifeWise OR, LifeWise WA, MSC Life; Premera and Premera BC consolidating statements as of 12/31/02; Audited Statements will be provided as received; Accounts receivable aging as of 12/31/02; Explanation of accounts receivable accounts over \$5 mm as of 12/31/98; Detail of prepaid account 13500 as of 12/31/02; There are no additional non-recurring items other than those identified as of 9/30/02; Experience Rated Refund Payable reconciliation as of 12/31/02
0032673A		6/3/2003 0:00		Document Delivery Form providing response to request number 498 providing: Missing page from request 498
0032687		3/11/2003 0:00		Document Delivery Form providing response to request number E504 providing: the package of BCBSA materials as noted at Bates Range 0030327 was a set of BCBSA model documents. Roger Wilson of the BCBSA was supposed to send the materials to Mr. Domeika in advance of their meeting on June 26, 2002. However, Mr. Wilson did not send the materials in advance of the meeting. Moreover, Premera has already supplied a set of the BCBSA Model documents pursuant to WA 13.
0032688		3/13/2003 0:00		question and answer to Question #21

PREMERA DOCUMENT LOG

Req Bates	End Bates	Document Date	Title
0032689	0032691	3/13/2003 0:00	Document Delivery Form providing response to request number WA 05 providing: email from Robert King re: OIC Case Management Order
0032692	0032698	3/6/2003 0:00	Document Delivery Form providing response to request number WA 49 providing: Document Delivery Form providing response to request number 26C providing: WA 26 Revised line of business report for year-end 2002
0032699	0032700	3/21/2003 0:00	Document Delivery Form providing response to request number C210-211 providing: Document Delivery Form providing response to request number E445B providing: 1998, 1999, 2000 base salaries for the CEO, all EVP's, Jack McRae and Curtis Taylor; 2002 annual bonus earned by the CEO, all EVP's, Jack McRae and Curtis Taylor; 1998, 1999 and 200 long-term incentive earned by the CEO and all EVP's, Jack McRae and Curtis Taylor; 2002 annual bonuses earned by the CEO, all EVP's, all SVP's and all Benchmark Jobs; 2002 long-term incentive earned by the CEO and all EVP's and all SVP's; Current executive deferred compensation account balances for the CEO, all EVP's and all SVP's; In addition, the following key dates for each executive (date of birth, date of hire, date of promotion to SVP)
0032704	0032707	3/21/2003 0:00	SVP
0032708	0032739	3/20/2003 0:00	Document Delivery Form providing response to request number 498A providing: Audited statements Consolidated Premera GAAP as of 12/31/02
0032740	0032746	3/21/2003 0:00	Document Delivery Form providing response to request number 871 providing: Supporting worksheets for other income/expense, investments income and realized gain (loss) that describes how the split between WA and AK was calculated through year-end 2002.
0032747		3/21/2003 0:00	Document Delivery Form providing response to request number 872 providing: SEE Z871
0032748	0032749	3/18/2003 0:00	Document Delivery Form providing response to request number 500 providing: Description of the administrator and the insurance company behind physicians pension plan.
0032750	0032751	3/20/2003 0:00	Document Delivery Form providing response to request number 501 providing: Silchester International Value Equity Trust Fund prices at: 12/31/01, 12/31/02, 1/31/03; PBC held this investment at 12/31/01, 12/31/02, 1/31/03
0032752	0032755	3/20/2003 0:00	Document Delivery Form providing response to request number 502 providing: Description of reasoning behind rate of decrease of the health care cost trend assumption used in developing PBO for other post-retirement benefits. Copy of page of Watson Wyatt presentation which shows survey results
0032756	0032757	3/21/2003 0:00	Document Delivery Form providing response to request number 867 providing: Electronic recast of projection model
0032758	0033808	3/26/2003 0:00	Document Delivery Form providing response to request number WA 65 providing rate filings of LifeWise of Washington, PBC large group, medicate supplement, SEHI Small Group for Oregon, Small Group for Alaska
0033809	0033859	3/25/2003 0:00	Document Delivery Form providing response to request number WA 82 providing updated underwriting manual as of March 2002.
0033860	0033867	3/26/2003 0:00	Document Delivery Form providing response to request number WA 91 providing Dimensions addenda for standard provider contracts
0033868	0033874	3/26/2003 0:00	Document Delivery Form providing response to request number E 511 providing Premera responses to list of questions (dated March 24, 2003) posed by Marcus Garrett (PWC).

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Appendix 1 - Premera Resp Log

PREMERA DOCUMENT LOG

Begin Bates	End Bates	Document Date	Title
0033875	0033881	3/25/2003 0:00	Document Delivery Form providing response to request number 20 B providing: 2002 Annual statutory statements for PBC, SWL, MSC Life, LifeWise of OR and LifeWise of WA
0033882	0033948	3/26/2003 0:00	Document Delivery Form providing response to request number WA28 providing: Officer's Financial and Operational Review for 1/31/03 (beige book)
0033949	0033950	3/27/2003 0:00	Document Delivery Form providing response to request number B157 & B164 providing: electronic copies of fee schedules and procedure codes in response to consultants' revised requests
0033951	0033953	3/27/2003 0:00	Document Delivery Form providing response to request number B157 providing: Providence Alaska Inpatient and Outpatient Claims Experience Analysis
0033954	0033955	3/27/2003 0:00	Document Delivery Form providing response to request number B164 providing: Alaska Fee Schedule as a percent of Medicare
0033956	0033965	3/27/2003 0:00	Document Delivery Form providing response to request number E509 providing: chart regarding Care Facilitation Programs; BST Tiered Network Development Guidelines; chart regarding Dimensions Actual Groups & Members-2003
0033964	0033965	3/27/2003 0:00	Document Delivery Form providing response to request number E512 providing: Premera Responses to follow up questions (requested during March 26, 2003 conference call) posed by Marcus Garrett (PWC) attached hereto
0033966	0034518	3/31/2003 0:00	Document Delivery Form providing response to request number WA 20 providing copies of 2002 annual statement for Premera Blue Cross, LifeWise of WA, LifeWise of OR, States West Live and MSC Life
0034519	0034520	3/28/2003 0:00	Document Delivery Form providing response to request number B160A providing on CD revised Alaska membership for December 2002, 2001, 2000 by line of business, group name, zip code and county
0034519	0034520	3/28/2003 0:00	Document Delivery Form providing response to request number B160A providing: Revised electronic copy of Alaska membership for Dec. 2002, 2001, 2000 by line of business, group name, zip code and county
0034521	0034522	3/21/2003 0:00	Document Delivery Form providing response to request number E 445C providing salary, bonus and long-term incentive information for Sigrun Lane and Karen Bartlett
0034521	0034522	3/27/2003 0:00	Document Delivery Form providing response to request number E445c providing: Salary, Bonus and Long-Term Incentive information for Sigrun Lane and Karen Bartlett
0034523	0034533	4/1/2003 0:00	Document Delivery Form providing response to request number C 246A providing copy of letter to Andrew Wang dated September 11, 1998 regarding PPFSC monitoring, and presentation dated February 22, 1999, by BCBSA to PPFSC
0034523	0034533	4/1/2003 0:00	Document Delivery Form providing response to request number C246A providing: (a) Letter to Andrew Wang, dated 9/11/98, re: PPFSC monitoring; (b) Presentation, dated 2/22/99, by BCBSA to PPFSC

PREMERA DOCUMENT LOG

Req Bates	End Bates	Document Date	Title
			Document Delivery Form providing response to request number E513 providing: Current Standard Product and Compensation Addenda to Premera's Washington practitioner agreement or facility agreements; Dimensions; Dimensions Benefit Tier Standards; Public Employees Benefits Board; MSC Care/Prime Care; Participating; Preferred; Fee for Service; Healthy Options; HealthPlus; Facility Agreement - Compensation Agreement; Facility Agreement - Dimensions Benefit Tier Standards
0034534	0034571	4/2/2003 0:00	Document Delivery Form providing response to request number WA28 providing: February 2002 Officer's Financial & Operational Review (Beige Book)
0034572	0034633	4/7/2003 0:00	Document Delivery Form providing response to request number E513 providing: Individual Managed Care - Fee For Service; Medicare + Choice - Full Risk; Medicare + Choice - Shared Risk; MSC Care/Prime Care - Fee For Service; Participating (indemnity); Basic Health Plan - Fee For Service; Basic Health Plan - Full Risk; Healthy Options - Shared Risk; Healthy Options - Fee For Service; Healthy Options - Full Risk; Health Plus - Shared Risk; Medicare + Choice - Fee for Service (SE); Medicare + Choice - Fee for Service (SW); Point of Service - Fee for Service; Point of Service - Full Risk; Point of Service - Shared Risk; Preferred; Sample Hospital Pricing Agreement
0034634	0034866	4/7/2003 0:00	Document Delivery Form providing response to request number B164 providing: Electronic copies Code Allowable Sheets for the four Alaska Regions.
0034867	0034868	4/8/2003 0:00	Document Delivery Form providing response to request number E409A providing: Premera BDR through March 2003 pursuant to John Ellis' request on March 14, 2003
0034869	0034906	4/9/2003 0:00	Document Delivery Form providing response to request number 522 providing: Answers to questions on 3/27/03 e-mail regarding investments
0034907	0034910	4/8/2003 0:00	Document Delivery Form providing response to request number E403 providing: Copy of agreement between Premera Blue Cross and Microsoft, dated October 11, 2002.
0034911	0035022	4/11/2003 0:00	Document Delivery Form providing response to request number 874-910 providing: Premera memorandum and supporting documentation in response to 36 tax-related questions posed by PWC on March 4, 2003
0035023	0035057	4/11/2003 0:00	Document Delivery Form providing response to request number B157 & B164 providing: Blue Cross of Washington and Alaska contracts with Providence Hospital in Alaska
0035058	0035119	4/14/2003 0:00	Document Delivery Form providing response to request number 517 providing: Follow up on open items from 4/1/03 conference call
0035120	0035121	4/15/2003 0:00	Document Delivery Form providing response to request number 518 providing: ASC Alaska business split out
0035122	0035123	4/14/2003 0:00	Document Delivery Form providing response to request number 519 providing: Answers to questions from 4/3/03 Kim Jacobson email
0035124	0035125	4/14/2003 0:00	Document Delivery Form providing response to request number 521 providing: Answers to questions from 4/3/03 Kim Jacobson email
0035126	0035127	4/14/2003 0:00	Document Delivery Form providing response to request number 524 providing: Answers to questions from 4/4/03 Chris Thomas email
0035128	0035129	4/14/2003 0:00	

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PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document ID	Date	Title
0035130	0035133	Document Delivery Form providing response to request number 527 providing: Answers to questions from 4/14/03 Blackstone request	4/15/2003 0:00	
0035134	0035249	Document Delivery Form providing response to request number E509 providing: Small Group Rate Filing Effective 6/1/2003	4/17/2003 0:00	
0035250	0035272	Document Delivery Form providing response to request number E515 providing: Eastern Washington Mid-Year fee schedule documents	4/17/2003 0:00	
0035273	0035276	Document Delivery Form providing response to request number 520 providing: Answers to questions from 4/3/03 Kim Jacobson email	4/15/2003 0:00	
0035277	0035278	Document Delivery Form providing response to request number 523 providing: Answers to questions from 4/8/03 Jeff Peres email	4/15/2003 0:00	
0035279	0035280	Document Delivery Form providing response to request number E526 providing: Underwriter Authority Matrix	4/17/2003 0:00	
0035281	0035291	Document Delivery Form providing response to request number E528 providing: Presentation "Refinement of Corporate Names and Marks" with additional support notes.	4/17/2003 0:00	
0035292	0035295	Document Delivery Form providing response to request number E445D providing: 2002 bonus information for benchmark jobs	4/21/2003 0:00	
0035296	0035324	Document Delivery Form providing response to request number E525 providing: Matrix reflecting rules re director independence and draft questionnaire as referenced on Bates page 0032525 of December 10, 2002 Governance Committee minutes. NOTE: The matrices and memorandum were drafted in December 2002 and reflected the current and proposed Sarbanes-Oxley, NASDAQ and NYSE rules at that time. Updated matrices and questionnaire are also attached hereto as part of Premera's packet of questionnaires it sends each year to all directors	4/21/2003 0:00	
0035325	0035338	Document Delivery Form providing response to request number E528 providing: MSC Brand Equity Study- September 2000	4/21/2003 0:00	
0035339	0035340	Document Delivery Form providing response to request number E481A providing: Schedule and detail on historical 'other income' and 'other expenses' by state. Revised for 1998 for account 72000 as amounts were determined to apply specifically to WA	4/24/2003 0:00	
0035341	0035345	Document Delivery Form providing response to request number E505 & C241 providing: Capital Uses Analysis	4/25/2003 0:00	
0035346	0035350	Document Delivery Form providing response to request number E506 providing: An analysis of Premera's proposed IPO which would include an accretion/dilution analysis demonstrating the impact to Premera's return on equity and/or return on pro-forma earnings per share from employing any capital raised by Premera in the IPO.	4/25/2003 0:00	
0035351	0035355	Document Delivery Form providing response to request number E507 providing: Additional data request for actuarial valuation split for W/A/K on the following: Change in non-admitted assets, Other income/expense	4/24/2003 0:00	
0035356	0035357	Document Delivery Form providing response to request number E510 providing: Premera's response to email question posed by Kim Jacobson on 3/19/2003	4/25/2003 0:00	

PREMERA DOCUMENT LOG

Req Bates	End Bates	Document Date	Title
0035358	0035362	4/30/2003 0:00	Document Delivery Form providing response to request number E514 providing: Listing of Top Ten Washington Hospitals and Key Reimbursement terms; Listing of Top Ten Rural W. Washington and Top Ten Rural E. Washington Hospitals and Key Reimbursement terms; Listing of Top Ten Washington Physician Groups and Key Reimbursement terms; Listing of Top Ten Rural W. Washington and Top Ten Rural E. Washington Physician Groups and Key Reimbursement terms
0035363		5/6/2003 0:00	Document Delivery Form providing response to request number E529 providing: Consultants' request asks for "data" related to the following except from Bates page 0010220
0035364	0035433	3/31/2003 0:00	Document Delivery Form providing response to request number WA28 providing copy of March 2003 Officer's Financial & Operational Review (Beige Book)
0035434	000035476	5/12/2003 0:00	Document Delivery Form providing response to request number E530 providing response to questions from Signal Hill
0035477	0035498	5/9/2003 0:00	Document Delivery Form providing response to request number E531 providing response to questions from BlackStone
0035499	0035506	5/12/2003 0:00	Document Delivery Form providing response to request number 532 providing answers to question from 4/25/03 PWC request
0035507	0035572	5/15/2003 0:00	Document Delivery Form providing response to request number WA04 providing: Presentations related to conversion and/or strategic planning presented to Premera Board of Directors at Premera Board meeting on May 13, 2003
0035573	0035575	5/12/2003 0:00	Document Delivery Form providing response to request number E516 providing: Physician counts per questions 18, 19, 22, 23 and 24 of John Ellis' provider contracting meeting questions.
0035576	0035577	5/21/2003 0:00	Document Delivery Form providing response to request E 537 - Providing table showing average compensation for EVP's and SVP's, 1998 - 2002.
0035578	0035618	5/27/2003 0:00	Document Delivery Form providing response to request number WA06 providing: Premera: BOD Meeting minutes dated 2/11-12/03; Investment, Audit & Compliance Committee Meeting minutes dated 2/5/03; Investment, Audit & Compliance Committee Meeting minutes dated 2/11-12/03; Quality Committee Meeting minutes dated 2/12/03; Premera Blue Cross: BOD Meeting minutes dated 2/11-12/03; Investment, Audit & Compliance Committee Meeting minutes dated 2/5/03; Investment, Audit & Compliance Committee Meeting minutes dated 2/11/03
0035619	0035654	5/22/2003 0:00	Document Delivery Form providing response to request number WA 106 providing: Mercer Compensation Study presented to Premera Board at May BOD meeting
0035655	0035680	5/22/2003 0:00	Document Delivery Form providing response to request number WA 128 providing: Communications to Premera management re Premera conversion message. Q&A document re conversion
0035681	0035685	5/23/2003 0:00	Document Delivery Form providing response to request number E539 and E540 providing: Premera responses to questions raised by PWC and John Ellis
0035686	0035706	5/23/2003 0:00	Document Delivery Form providing response to request number E541 providing: Matrix showing terms of Voting Trust and Divestiture Agreements from other conversions
0035707	0035708	5/29/2003 0:00	Document Delivery Form providing response to request number E537A providing: Summary of compensation paid to Betty Woods, former CEO of Premera, in 1998 and 1999.

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0035709	0035710	5/30/2003 0:00	Document Delivery Form providing response to request number 538 providing: Answers to question for PWC questions on request #507
0035711	0035777	5/29/2003 0:00	Document Delivery Form providing response to request number WA 28 providing: April 2003 Officer's Financial & Operational Review (Beige Book)
0035778	0035798	6/3/2003 0:00	Document Delivery Form providing response to request number WA 06A providing: February and April Premera and Premera Blue Cross Governance Committee Minutes
0035799	0035803	6/3/2003 0:00	Document Delivery Form providing response to request number 545 providing: For each physician agreement that provides for above-standard fees and that is for a group of twenty or more physicians, please provide: (a) The name of the physician group; (b) The city and county of its primary place of business; (c) The total number of physicians in the group; (d) The number of physicians of the group by county, if the group has physicians in more than one county.
0035804		6/3/2003 0:00	Document Delivery Form providing response to request number E546 providing: Why are counties in Oregon and Idaho included in your response to E5167
0035805	0035837	6/4/2003 0:00	Document Delivery Form providing response to request number 498 B providing: Audited statements Consolidated Premera Blue Cross GAAP as of 12/31/02
0035838	0035870	6/4/2003 0:00	Document Delivery Form providing response to request number 498B providing: Audited statements Consolidated Premera Blue Cross GAAP as of 12/31/02
0035871	0035873	6/5/2003 0:00	Document Delivery Form providing response to request number E533 providing: CD's w/the following sample policies: Individual, Community Related 2-99 ("CR"), 100+ Retention, Minimum premium plan 100+, CR 2-99 PPO (small group), ASC (large group), Medicare Supp-AK, Federal Employee Program-AK
0035874	0035875	6/5/2003 0:00	Document Delivery Form providing response to request number E547 providing: investment-related data requests by Signal Hill Capital Group
0035876	0035878	6/5/2003 0:00	Document Delivery Form providing response to request number E542 and E544 providing: Premera's responses to E542 and E544
0035879	0035984	6/6/2003 0:00	Document Delivery Form providing response to request number E548 providing: Cumulative Business Decision Report for renewing and new medical business offr Washington at year-end 2001, year-end 2002, 2003 (through May).
0035985	0035986	6/6/2003 0:00	Document Delivery Form providing response to request number 549 providing: Answers to PWC questions on request #549
0035987	0035988	6/17/2003 0:00	Document Delivery Form providing response to request number 550 providing: Answers to PWC questions on request #550
0035989	0035991	6/17/2003 0:00	Document Delivery Form providing response to request number 551 providing: Answers to PWC questions on request #551
0035992	0035999	6/17/2003 0:00	Document Delivery Form providing response to request number E552 providing: Supporting worksheets for REVISED other income/expense, investments income and realized gain(loss) that describes how the split between WA and AK was calculated through year end 2002
0036000	0036019	6/17/2003 0:00	Document Delivery Form providing response to request number E553 providing: investment-related follow-up data request by Signal Hill Capital Group

PREMERA DOCUMENT LOG

Req Bates	Ent Bates	Document Date	Title
0036020	0036273	6/18/2003 0:00	Document Delivery Form providing response to request number E548 providing: BDR Reports for 2001, 2002 and year-to-date May 2003 showing full year data for each period.
0036274	0036276	6/17/2003 0:00	Document Delivery Form providing response to request number E554 providing: data request from Kim Jacobson of Peterson Consulting
0036277	0036296	6/27/2003 0:00	Document Delivery Form providing response to request number WA04 providing: Sale and Marketing Presentation presented to Premera officers on 6/25/03
0036297	0036326	6/27/2003 0:00	Document Delivery Form providing response to request number E558 providing: Copies of engagement letters between Premera and Ernst & Young related to various conversion-related tax matters
0036327	0036346	6/30/2003 0:00	Document Delivery Form providing response to request number WA04 providing: Revised Sales and Marketing Presentation presented to Premera officers on June 30, 2003
0036347	0036348	6/30/2003 0:00	Document Delivery Form providing response to request number 561 providing: Answers to Signal Hill question on projected yield on investments
0036349	0036424	7/1/2003 0:00	Document Delivery Form providing response to request number WA28 providing: May 2003 Officer's Financial & Operational Review (Beige Book)
0036425	0036431	7/3/2003 0:00	Document Delivery Form providing response to request number 555 providing: Answers to differences between states for GAAP versus Stat.
0036432	0036435	7/10/2003 0:00	Document Delivery Form providing response to request number 563 providing:
0036436	0036437	7/14/2003 0:00	Document Delivery Form providing response to request number E562 providing: Electronic copies of BDRs for CY 2001, CY 2002 and YTD 2003 (through June).
0036438	0036444	7/9/2003 0:00	Document Delivery Form providing response to request number WA04 providing: Board Newsletter - July 2003
0036445	0036447	7/14/2003 0:00	Document Delivery Form providing response to request number E543 providing: Premera's response to E543 posed by PWC
0036448	0036531	7/17/2003 0:00	Document Delivery Form providing response to request number WA05 providing: Additional correspondence between Premera and Goldman Sachs
0036532	0036534	7/17/2003 0:00	Document Delivery Form providing response to request number 561 providing: Change in Control Agreement for Heyward Donigan
0036535	0036547	7/29/2003 0:00	Document Delivery Form providing response to request number WA102 providing: AM Best Rating Report, dated July 17, 2003, for Premera Blue Cross
0036548	0036553	8/4/2003 0:00	Document Delivery Form providing response to request number E559 providing: Copy of Engagement letter between Ernst & Young and Premera, dated June 29, 2003
0036554	0036555	8/4/2003 0:00	Document Delivery Form providing response to request number E567 providing: response to a question presented by Dr. Lefler
0036556	0036557	8/13/2003 0:00	Document Delivery Form providing response to request number WA564 providing: copy of email responses to John Ellis requesting additional information/clarification
0036559	0036576	2/20/2003 0:00	Privilege Document 0000000021 - 0000000038; WA 04; Conversion Update Materials; E570 Crosswalk
0036577	0036599	2/21/2003 0:00	Privilege Document 0000000039 - 0000000061; WA 05; LeBouf, Lamb BCBS Conversion and Acquisition Study; E570 Crosswalk

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Appendix 1 - Premera Document Log

PREMERA DOCUMENT LOG

Reg Bates	End Bates	Document Date	Title
0036600		8/26/2002 0:00	Privilege Document 0000000124; WA 05; Town Hall Presentations; E570 Crosswalk
0036601	0036604	8/25/2002 0:00	Privilege Document 0000000127 - 0000000130; WA 05; Rough Draft of an Outline for Mgmt Presentation at Public Hearing; E570 Crosswalk
0036605	0036607	8/8/2002 0:00	Privilege Document 0000000134 - 0000000136; WA 49; Preliminary Thoughts Before Tomorrow's Meeting; E570 Crosswalk
0036608	0036610	8/2/2002 0:00	Privilege Document 0000000137 - 0000000139; WA49, WA50, E439, E452, WA53; Premera Conversion - Effective Tax Rate Work Plan; E570 Crosswalk
0036611	0036715	5/8/2002 0:00	Privilege Document 0000000171 - 0000000275; WA04; Board Planning Steering Committee meeting; E570 Crosswalk
0036716	0036743	3/20/2002 0:00	Privilege Document 0000000408 - 0000000435; WA04; Board Planning Steering Committee meeting; E570 Crosswalk
0036744	0036783	3/7/2002 0:00	Privilege Document 0000000436 - 0000000475; WA04; Board Planning - EMG Meeting; E570 Crosswalk
0036784	0036793	1/9/2002 0:00	Privilege Document 0000000570 - 0000000579; WA04, WA06; Board Planning Meeting; E570 Crosswalk
0036794	0036832	10/13/2001 0:00	Privilege Document 0000000642 - 0000000680; WA04; Board Planning Meeting; E570 Crosswalk
0036833	0036835	10/6/2002 0:00	Privilege Document 0000000947 - 0000000949; WA06, B102, B103, B113, WA103-107; Premera BOD Retreat minutes; E570 Crosswalk
0036836	0036838	10/6/2002 0:00	Privilege Document 0000000950 - 0000000952; WA06, B102, B103, B113, WA103-107; Premera BOD retreat minutes; E570 Crosswalk
0036839	0036848	8/14/2002 0:00	Privilege Document 0000000959 - 0000000968; WA06, B102, B103, B113; Premera BOD minutes; E570 Crosswalk
0036849	0036858	8/14/2002 0:00	Privilege Document 0000000969 - 0000000978; WA06, B102, B103, B113; Premera BOD minutes; E570 Crosswalk
0036859	0036866	12/11/2001 0:00	Privilege Document 0000001038 - 0000001045; WA06, B102, B103, B113; Premera Investment, Audit & Compliance Committee minutes; E570 Crosswalk
0036867	0036884	12/6/2000 0:00	Privilege Document 0000001090 - 0000001107; WA06, B102, B103, B113; Premera BOD minutes; E570 Crosswalk
0036885	0036904	8/16/2000 0:00	Privilege Document 0000001108 - 0000001127; WA06, B102, B103, B113; Premera BOD minutes; E570 Crosswalk
0036905	0037004	5/1/2002 0:00	Privilege Document 0000001128 - 0000001227; WA04; Board Planning Steering Committee meeting; E570 Crosswalk
0037005	0037007	3/12/2003 0:00	Privilege Document 0000001396 - 0000001398; WA 48; Attorney Client/Work Product Protected; E570 Crosswalk
0037008	0037013	2/12/2002 0:00	Privilege Document 0000001467 - 0000001472; WA06, B102, B103, B113; Premera Investment, Audit & Compliance Committee meeting; E570 Crosswalk
0037014	0037020	2/12/2002 0:00	Privilege Document 0000000959 - 0000000968; WA06, B102, B103, B113; Premera Investment, Audit & Compliance Committee minutes; E570 Crosswalk
0037021	0037029	12/11/2001 0:00	Privilege Document 0000001480 - 0000001488; WA06, B102, B103, B113; Premera Blue Cross Investment, Audit & Compliance Committee minutes; E570 Crosswalk

PREMERA DOCUMENT LOG

Reg Bates	End Bates	Document Date	Title
0037030	0037048	9/9/2001 0:00	Privilege Document 0000001508 - 0000001526; WA04; Presentation of Capital Planning Options; E570 Crosswalk
0037049	0037054	5/14/2002 0:00	Privilege Document 0000001530 - 0000001535; WA06, B102, B103, B113; Premera Special Meeting of the BOD; E570 Crosswalk
0037055	0037062	5/14/2002 0:00	Privilege Document 0000001536 - 0000001543; WA04; Premera Capital Planning - Transaction Priorities; E570 Crosswalk
0037063	0037072	12/11/2002 0:00	Privilege Document 0000001544 - 0000001553; WA06, B102, B103, B113; Premera BOD minutes; E570 Crosswalk
0037073	0037079c	12/11/2002 0:00	Privilege Document 0000001554 - 0000001563; WA06, B102, B103, B113; Premera Blue Cross BOD minutes; E570 Crosswalk
0037080	0037147	2/6/2002 0:00	Privilege Document 0000001633 - 0000001727; WA04; Board Planning Steering Committee Meeting; E570 Crosswalk
0037175	0037183	8/15/2000 0:00	Privilege Document 0000001830 - 0000001838; WA06, B102, B103, B113; Premera Executive and Governance Committee meeting; E570 Crosswalk
0037184	0037229	8/21/2003 0:00	Document Delivery Form providing response to request number WA04 providing: Presentations presented to Premera Board of Directors on August 12 and 13, 2003
0037230	0037289	8/21/2003 0:00	Document Delivery Form providing response to request number WA06B providing: May 2003 Premera and Premera Blue Cross Board Committee Minutes
0037290	0037295	8/26/2003 0:00	Document Delivery Form providing response to request number E557 providing: Premera response to PW/Cs IT Controls question
0037296	0037302	8/15/2003 0:00	Document Delivery Form providing response to request number 558 providing: Information per 8/13/03 email
0037303	0037304	8/15/2003 0:00	Document Delivery Form providing response to request number 566 providing: Updated AK projection numbers
0037305	0037309	8/21/2003 0:00	Document Delivery Form providing response to request number E568 providing: letter dated January 29, 2003 from Diane Doubleday to Patrick M. Fahey
0037310	0037471	8/22/2003 0:00	Document Delivery Form providing response to request number E569 providing: BCBSA Brand Book
0037472	0037551	8/28/2003 0:00	Document Delivery Form providing response to request number WA28 providing: June 2003 Officers Financial and Operational Review
0037552	0037553	9/4/2003 0:00	Document Delivery Form providing response to request number WA01 providing: Updated corporate organizational chart
0037554	0037634	9/4/2003 0:00	Document Delivery Form providing response to request number WA28 providing: July 2003 Officers Financial and Operational Review
0037635	0037667	9/10/2003 0:00	Document Delivery Form providing response to request number E580 providing: Documents ordered to be produced by Premera pursuant to Spedal Masters Decision Following In Camera Review of Documents, dated September 8, 2003; Privilege documents PPRE 001758 - 001762, 001848 - 001873
0037668	0037855	9/10/2003 0:00	Document Delivery Form providing response to request number E571 providing: Materials related to BCBSA marketing activities in the State of Washington

PREMERA DOCUMENT LOG

Beg Bates	End Bates	Document Date	Title
0037856	0037889	9/10/2003 0:00	Document Delivery Form providing response to request number E572 providing: Premera participated in the BCBSA Brand Communications Audit in 2000 and 2001 and provided information to the BCBSA regarding ad spending by medium. Acopy of the 2001 Survey is attached hereto. Premera did not participate in 2002 or 2003
0037890		9/10/2003 0:00	Document Delivery Form providing response to request number E573 providing: please see documentation provided in response to E571
0037891		9/10/2003 0:00	Document Delivery Form providing response to request number E574 providing: please see documentation provided in response to E571
0037892		9/10/2003 0:00	Document Delivery Form providing response to request number E575 providing: Premera is able to download customer "leads" from BCBSA web site. In 2002, Premera downloaded a total of 545 "leads" therefrom. It is unknown how many of these leads became or will become customers. In 2003, Premera has downloaded a total of 93 customer "leads" from the site. It is unknown how many of these leads became or will become customers.
0037893		9/10/2003 0:00	Document Delivery Form providing response to request number E577 providing: there are no other BCBSA requirements to which Premera must adhere in order to maintain its license or participate in BCBSA programs
0037894	0037920	9/10/2003 0:00	Document Delivery Form providing response to request number E578 providing: Attached please find documentation regarding Premera's decoupling efforts related to LifeWise of Washington and LifeWise of Oregon
0037921	0037923	9/10/2003 0:00	Document Delivery Form providing response to request number E579 providing: Premera Investment Portfolio Performance as of June 30, 2003
0037924	0037925	9/10/2003 0:00	Document Delivery Form providing response to request number E582 providing: Map of State of Washington showing counties in which Premera has Blue Cross and /or Blue Shield. Premera also confirms that Regence BCBS has the right to use both marks in Clark County, Washington
0037926	0037929	9/16/2003 0:00	Document Delivery Form providing response to request number 576 providing: Information per 8/25/03 email
0037930	0038115	9/16/2003 0:00	Document Delivery Form providing response to request number 581 providing: Information per 9/5/03 email from Signal Hill
0038116	0038117	9/23/2003 0:00	Document Delivery Form providing response to request number WA128 providing: Conversion update sent to all Premera employees on September 17, 2003
0038118	0038119	9/30/2003 0:00	Document Delivery Form providing response to request number WA01 providing: Updated corporate organizational chart
0038120	0038134	9/30/2003 0:00	Document Delivery Form providing response to request number WA04 providing: Conversion presentation presented to Premera Management on September 9, 2003
0038135	0038174	9/30/2003 0:00	Document Delivery Form providing response to request number E583 providing: Premera responses to Cantilo & Bennett questions regarding BCBSA marketing activities
0038175	0038176	10/1/2003 0:00	Document Delivery Form providing response to request number 585 providing: 2002 IBNR reserves compared to booked amounts
0038177	0038178	10/1/2003 0:00	Document Delivery Form providing response to request number 587 providing: payments made to BCBSA in the past five years and the reason for such payments

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Beg Bates	End Bates	Document Date	Title
0038179	0038180	10/1/2003 0:00	Document Delivery Form providing response to request number 588 providing: information regarding the Premera PEBB account
0038181	0038257	10/1/2003 0:00	Document Delivery Form providing response to request number W/A28 providing: August 2003 Officer's and Director's Financial and Operational Review
0038258	0038259	10/1/2003 0:00	Document Delivery Form providing response to request number 586 providing: States West Life Insurance Company Revenue & Claims Variance Analysis
0038260	0038352	10/7/2003 0:00	Document Delivery Form providing response to request number W/A04b providing: Presentations presented to Premera BOD on October 5 and 6, 2003
0038353	0038354	10/7/2003 0:00	Document Delivery Form providing response to request number W/A125 providing: Intercompany Agency Agreement, dated January 22, 1999, between Premera Blue Cross and Premera First, Inc.
0038355	0038356	10/7/2003 0:00	Document Delivery Form providing response to request number E564 providing: Premera responses to questions posed by Keith Leffler
0118910	0118910		

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**APPENDIX II: BLUE CROSS BLUE SHIELD CONVERSION
TRANSACTIONS**

APPENDIX II

BLUE CROSS AND BLUE SHIELD CONVERSIONS

BLUE CROSS AND BLUE SHIELD CONVERSIONS

NAME	TYPE	DATES	COMMENTS
Blue Cross and Blue Shield of Kentucky	Merger/Acquisition	1993	Anthem acquired Blue Cross and Blue Shield of Kentucky in 1993.
Blue Cross of California	Conversion to for-profit	1993	Finalized. In 1996, WellPoint and Blue Cross of California merged into a single stockholder-owned company, WellPoint Health Networks Inc.
BlueCross and BlueShield of Missouri	Conversion	1994	Formation of RightChoice and the public offering of its stock.
Blue Cross and Blue Shield of Maryland	Proposed conversion from a nonprofit health services corporation to a for-profit stock insurance company	1994-1995	Proposed conversion was rejected by the Insurance Commissioner in January 1995.
Trigon Healthcare, Inc.	Demutualization and Initial Public Offering	1994-1997	Finalized. Anthem, Inc. and Trigon Healthcare, Inc. jointly announced that they have entered into a definitive merger agreement.

NAME	TYPE	DATES	COMMENTS
Community Mutual Insurance of Ohio	Merger	1995	Merged with Anthem Insurance Companies, Inc. in 1995.
Trigon Healthcare, Inc	Proposal to convert to a for-profit corporation and Initial Public Offering	1996	Completed 1996.
Blue Cross Blue Shield of Nevada	Merger	1996	Merger with Blue Cross Blue Shield of Colorado, purchased by Anthem in Colorado acquisition.
Blue Cross of Western Iowa	Merger	1996	Merged with South Dakota Blue Shield in 1996.
Blue Cross and Blue Shield of New Jersey	Proposed Merger	1996-1997	Proposed 1996 merger with Delaware BCBS put on hold because of undervaluation concerns. Deal called off in 1997 citing legal and regulatory hurdles in both states.

NAME	TYPE	DATES	COMMENTS
Blue Cross and Blue Shield of Texas	Merger with BCBSTL	1996-1998	Merger approved by Illinois and Texas Insurance Departments in late 1998. Challenged in court by Attorney General and approved on appeal July, 2003.
Blue Cross Blue Shield of Illinois	Merger with BCBSTX	1996-1998	Merger approved by Illinois and Texas Insurance Departments in late 1998. Challenged in court by Attorney General and approved on appeal July, 2003.
Blue Cross Blue Shield of Georgia	Conversion to for-profit company	1996-2001	Plan approved, class action lawsuits filed in 1997, settled July 1998. Acquisition by WellPoint Health Networks, Inc. in 2001.
Empire Health Choice (formerly known as Empire Blue Cross & Blue Shield)	Proposed conversion of Empire Blue Cross to for-profit, publicly traded company	1996-2002	Empire BCBS's conversion plan was approved in May 2000. In January of 2002, New York legislators and Governor Pataki approved a change in New York's insurance law allowing Empire BCBS to convert to for-profit status.

NAME	TYPE	DATES	COMMENTS
Blue Cross and Blue Shield of Colorado	Proposed Conversion and Acquisition by Anthem	1997-1998	Proposed conversion and sale to Anthem approved November 5, 1999, however two appeals resulting from that proceeding remain pending in the Colorado Supreme Court.
Blue Cross Blue Shield of Connecticut	Merger/Acquisition	1997-1999	Anthem Insurance Companies merger finalized in 1999.
Blue Cross Blue Shield of North Dakota	Conversion from a non-profit health services corporation to a non-profit mutual insurance company	1997-2000	Approved after a series of hearings in 1999 and 2000.
La Cruz Azul de Puerto Rico	Conversion from nonprofit to for-profit status	1998	Finalized.

NAME	TYPE	DATES	COMMENTS
Group Hospitalization and Medical Services, Inc. d/b/a BCBS of District of Columbia	Affiliated with Blue Cross Blue Shield of Maryland and Delaware	1998-2000	Merged with BCBS of Maryland in 1997. The combination of BCBSMD and GHMSI was completed in January 1998. CareFirst announced plans to affiliation with nonprofit BCBSD in December 1998. In January 1998 the combination BCBSD was required to maintain its nonprofit status for a period of two years, and that BCBSD agree to a "snapshot" valuation.
Blue Cross Blue Shield of New Hampshire	Acquisition	1999	Acquired by Anthem Inc., affiliated with CareFirst, the Maryland and D.C. BCBS plans in October 1999.
Blue Cross Blue Shield of Delaware	Conversion from a non-profit health services corporation to a for-profit domestic mutual insurance company	1999	BCBSD was required to maintain its nonprofit status for a period of two years, and that BCBSD agree to a "snapshot" valuation. The affiliation was approved in March 2000.

NAME	TYPE	DATES	COMMENTS
Associated Hospital Service of Maine (d/b/a Blue Cross and Blue Shield of Maine)	Conversion from a nonprofit hospital and medical service organization to a for-profit stock health insurer	1999-2000	Acquired by Anthem Insurance Companies, Inc. in May 2000.
Blue Cross and Blue Shield of Wisconsin	Proposed Conversion and Initial Public Offering	1999-2001	Conversion proposal approved in 2000, acquired by Cobalt Corp. in March 2001.
Blue Cross and Blue Shield of Kansas, Inc.	Conversion to for profit	1999-2000	Settled, August, 2000.
Blue Cross Blue Shield of New Mexico	Merger/Acquisition	2000-2001	Accepted an acquisition offer from Health Care Services Corporation (the owner of BCBSIL and BCBSTX.
Anthem Insurance Companies, Inc.	Conversion from a mutual insurance company to a stock company and Initial Public Offering	2001	Plan of Conversion approved by the Indiana Department of Insurance on October 25, 2001; Completion of its conversion from a mutual insurance company to a stock company, and became a wholly owned subsidiary of Anthem, Inc. October 30, 2001.

NAME	TYPE	DATES	COMMENTS
Blue Cross and Blue Shield of Kansas, Inc.	Sponsored demutualization and sale to Anthem	2001-2002	February 11, 2002, demutualization and application of Anthem formally rejected by the Insurance Commissioner. Rejection affirmed by the Supreme Court in 2003.
RightCHOICE Managed Care, Inc. d/b/a Blue Cross & Blue Shield of Missouri and Alliance Blue Cross and Blue Shield	Proposed Acquisition	2001-2003	Approved, August, 2003. Proposed acquisition of Healthy Alliance Life Insurance Company, HMO Missouri, Inc., HealthLink HMO, Inc., Wholly Owned Subsidiaries of RightCHOICE Managed Care, Inc. d/b/a Blue Cross & Blue Shield of Missouri and Alliance Blue Cross and Blue Shield by WellPoint Health Networks, Inc.
CareFirst, Inc., the Blue Cross and Blue Shield licensee in Maryland, Delaware, the District of Columbia and Northern Virginia	Conversion and acquisition by WellPoint Health Networks, Inc.	2001-2003	Rejected by the Maryland Insurance Commissioner.
Trigon Healthcare, Inc.	Proposed Acquisition	2002	Acquisition of Trigon Healthcare Inc. by Anthem, Inc. April, 2000.

NAME	TYPE	DATES	COMMENTS
Blue Cross Blue Shield of Vermont	Conversion	2002	Legislature refused to enact legislation.
Mountain State BlueCross BlueShield of West Virginia	Proposed Affiliation with Highmark, Inc.	2002	Pending.
Blue Cross Blue Shield of Delaware	Conversion and acquisition by WellPoint Health Networks, Inc.	2002	Rejected by the Maryland Insurance Commissioner.
Blue Cross Blue Shield of the District of Columbia	Conversion and acquisition by WellPoint Health Networks, Inc.	2002	Rejected by the Maryland Insurance Commissioner.
Blue Cross Blue Shield of North Carolina	Conversion from a nonprofit to a for-profit insurer	2002-2003	Initial Application filed January 2002, Second Amended and Restated Plan of Conversion dated September 30, 2002, withdrawn July 8, 2003. BCBSNC provided state regulators with revised conversion agreements that meet approval by the BCBSA September 16, 2003.

NAME	TYPE	DATES	COMMENTS
Premiera Blue Cross and Blue Shield of Washington	Proposed Conversion and Initial Public Offering of Premiera	2002 – Present	Pending.
Premiera Blue Cross and Blue Shield of Alaska	Proposed Conversion and Initial Public Offering of Premiera	2002 – Present	Pending.
Cobalt Corp., Wisconsin	Merger/Acquisition by WellPoint Health Networks Inc.	2003	Approval of proposed merger, September 19, 2003, by order of the Wisconsin OIC, and by the BCBSA (precondition of the merger by the OIC). Unites two Blue Cross/Blue Shield providers, adds almost 1M members to WellPoint in the Midwest. June 3, 2003, WellPoint and Cobalt announced that they signed a definitive agreement to merge. The transaction is structured as a merger of Cobalt with a wholly owned subsidiary of WellPoint.